

Canada: Capital and Corporal Punishment and
Koteries, Joint Committee of the Senate and the
House of Commons on
ST SESSION—TWENTY-SECOND PARLIAMENT
1953-54



ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

and

Mr. Don. F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

WEDNESDAY, FEBRUARY 17, 1954

WEDNESDAY, FEBRUARY 24, 1954

TUESDAY, MARCH 2, 1954

WITNESS:

The Honourable Stuart S. Garson, Minister of Justice.

Appendix: Provisions of the present Criminal Code relating to Capital and Corporal Punishment and Lotteries.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

COMMITTEE MEMBERSHIP

For the Senate (10)

Hon. Walter M. Aseltine	Hon. Salter A. Hayden (<i>Joint Chairman</i>)
Hon. Élie Beaugard	Hon. Nancy Hodges
Hon. Paul Henri Bouffard	Hon. John A. McDonald
Hon. John W. de B. Farris	Hon. Arthur W. Roebuck
Hon. Muriel McQueen Fergusson	Hon. Clarence Joseph Veniot

For the House of Commons (17)

Mr. Maurice Boisvert	Mr. R. W. Mitchell
Mr. J. E. Brown	Mr. G. W. Montgomery
Mr. Don. F. Brown (<i>Joint Chairman</i>)	Mr. H. J. Murphy
Mr. A. J. P. Cameron	Mr. F. D. Shaw
Mr. Hector Dupuis	Mrs. Ann Shipley
Mr. F. T. Fairey	Mr. Ross Thatcher
Mr. E. D. Fulton	Mr. Phillippe Valois
Hon. Stuart S. Garson	Mr. H. E. Winch
Mr. A. R. Lusby	

A. Small,
Clerk of the Committee.

ORDERS OF REFERENCE

*Extract from the Minutes of the Proceedings of the Senate of Canada,
Wednesday, 10th February, 1954.*

Pursuant to the Order of the Day, the Senate resumed the adjourned Debate on the motion of the Honourable Senator Macdonald, seconded by the Honourable Senator Beauregard—That the Senate do unite with the House of Commons in the appointment of a Joint Committee of both Houses of Parliament to inquire into and report upon the questions whether the criminal law of Canada relating to (a) capital punishment, (b) corporal punishment or (c) lotteries, should be amended in any respect and, if so, in what manner and to what extent:

That the following Senators be appointed on behalf of the Senate on the said Joint Committee, namely, the Honourable Senators Aseltine, Beauregard, Bouffard, Farris, Fergusson, Hayden, Hodges, McDonald, Roebuck and Veniot.

That the Committee have power to appoint, from among its members, such subcommittees as may be deemed advisable or necessary and to sit while the House is sitting.

That the Committee have power to print such papers and evidence from day to day as may be ordered by the Committee for the use of the Committee and of Parliament.

That the Committee have power to send for persons, papers and records, and to report to the Senate from time to time.

That a message be sent to the House of Commons to inform that House accordingly.

The question being put on the said motion, it was—

Resolved in the affirmative.

*Extract from the Minutes of the Proceedings of the Senate of Canada
Thursday, 18th February, 1954:*

The Honourable Senator McDonald for the Honourable Senator Hayden from the Joint Committee of the Senate and House of Commons on Capital and Corporal Punishment and Lotteries beg leave to make their first Report, as follows:—

Your Committee recommend that their quorum be reduced to nine (9) Members.

All which is respectfully submitted.

SALTER A. HAYDEN,
Joint Chairman.

JOINT COMMITTEE

With leave of the Senate, the said Report was adopted.

Extract from the Minutes of the Proceedings of the Senate of Canada; Tuesday, the 2nd March, 1954:

The Special Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries beg leave to make their second Report, as follows:—

Your Committee recommend that they be empowered to retain the services of Counsel.

All which is respectfully submitted.

SALTER A. HAYDEN,
Joint Chairman.

With leave of the Senate, the said Report was adopted, on division.

Attest.

L. C. MOYER,
Clerk of the Senate.

House of Commons,
TUESDAY, JANUARY 12, 1954.

Resolved,—That a Joint Committee of both Houses of Parliament be appointed to inquire into and report upon the questions whether the criminal law of Canada relating to (a) capital punishment, (b) corporal punishment or (c) lotteries should be amended in any respect and, if so, in what manner and to what extent;

That 17 Members of the House of Commons, to be designated at a later date, be Members of the Joint Committee on the part of this House and that Standing Order 65 of the House of Commons be suspended in relation thereto;

That the Committee have power to appoint, from among its members, such subcommittees as may be deemed advisable or necessary; to call for persons, papers and records; to sit while the House is sitting and to report from time to time;

That the Committee have power to print such papers and evidence from day to day as may be ordered by the Committee for the use of the Committee and of Parliament, and that Standing Order 64 of the House of Commons be suspended in relation thereto;

And that a message be sent to the Senate requesting that House to unite with this House for the above purpose and to select, if the Senate deems advisable, some of its members to act on the proposed Joint Committee.

WEDNESDAY, February 3, 1954.

(Superseded February 15, 1954)

Ordered,—That the following Members be appointed to act on the Joint Committee of the Senate and the House of Commons as provided in the motion of the Minister of Justice, passed by this House on January 12, 1954, having to do with a revision of the Criminal Code: Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Decore, Dupuis, Fairey, Fulton, Garson, Lusby, Mitchell (*London*), Montgomery, Murphy (*Westmorland*), Shaw, Thatcher, Valois and Winch.

MONDAY, February 15, 1954.

Ordered,—That the following Members act on behalf of this House on the Joint Committee of both Houses of Parliament as provided in the motion of the Minister of Justice on January 12, 1954, and appointed to enquire into and report upon the questions whether the criminal law of Canada relating to (a) capital punishment, (b) corporal punishment or (c) lotteries should be amended in any respect and, if so, in what manner and to what extent: Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Decore, Dupuis, Fairey, Fulton, Garson, Lusby, Mitchell (*London*), Montgomery, Murphy (*Westmorland*), Shaw, Thatcher, Valois and Winch, be substituted for the Order of Reference dated February, 1954, to the said Committee.

MONDAY, February 15, 1954.

Ordered,—That the name of Mrs. Shipley be substituted for that of Mr. Decore on the said Committee.

THURSDAY, February 18, 1954.

Ordered,—That nine members constitute a quorum of the said Committee.

TUESDAY, March 2, 1954.

Ordered,—That the said Committee be empowered to retain the services of counsel.

Attest.

LEON J. RAYMOND,
Clerk of the House.

REPORTS TO THE SENATE AND THE HOUSE OF COMMONS

THE SENATE,

THURSDAY, February 18, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries beg leave to make their first Report, as follows:—

Your Committee recommend that their quorum be reduced to nine (9) Members.

All which is respectfully submitted.

THE SENATE,

TUESDAY, March 2, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries beg leave to make their second Report, as follows:—

Your Committee recommend that they be empowered to retain the services of counsel.

All which is respectfully submitted.

SALTER A. HAYDEN,

Joint Chairman.

HOUSE OF COMMONS,

THURSDAY, February 18, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries begs leave to present the following as a

FIRST REPORT

Your Committee recommends that 9 of its members constitute a quorum.

All of which is respectfully submitted.

HOUSE OF COMMONS,

TUESDAY, March 2, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries begs leave to present the following as a

SECOND REPORT

Your Committee recommends that it be empowered to retain the services of counsel.

All of which is respectfully submitted.

DON. F. BROWN,

Joint Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, FEBRUARY 17, 1954

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 5.00 p.m. for organization purposes.

Present:

The Senate: The Honourable Senators Aseltine, Beauregard, Fergusson, Hayden, Hodges, McDonald, and Veniot—(7).

The House of Commons: Messrs. Boisvert, Brown (*Essex West*), Dupuis, Fairey, Fulton, Garson, Lusby, Mitchell (*London*), Montgomery, Murphy (*Westmorland*), Shipley (Mrs.), Thatcher, Valois, and Winch—(14).

On motion of the Honourable Senator Beauregard, seconded by the Honourable Senator Venoit, the Honourable Senator Hayden was elected Joint Chairman representing the Senate.

On motion of Mr. Boisvert, seconded by Mr. Thatcher, Mr. Brown (*Essex West*) was elected Joint Chairman representing the House of Commons.

The Joint Chairmen expressed their appreciation for the honours conferred on them and remarked on the tasks lying ahead.

Mr. Brown (*Essex West*) presided and read the Orders of Reference.

On motion of Mrs. Shipley, seconded by the Honourable Senator Hodges,

Resolved—That a recommendation be made to both Houses that 9 members of the Committee constitute a quorum.

On motion of the Honourable Senator Hodges, seconded by the Honourable Senator Fergusson,

Ordered—That, pursuant to the Orders of Reference, the Committee print, from day to day, 1000 copies in English and 300 copies in French of its Minutes of Proceedings and Evidence.

On motion of the Honourable Senator Fergusson, seconded by the Honourable Senator Hodges,

Resolved—That a Subcommittee on Agenda and Procedure be appointed, comprised of the Joint Chairmen and 5 members to be named by them.

After discussion,

Agreed—That the title of the Committee be “Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries”.

The Committee adjourned to the call of the Chair.

WEDNESDAY, FEBRUARY 24, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 3.30 p.m. The Joint Chairman, the Honourable Senator Hayden, presided.

Present:

The Senate: The Honourable Senators Aseltine, Bouffard, Farris, Hayden, Hodges and McDonald—(6).

The House of Commons: Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*Hyde Park*), Fairey, Fulton, Lusby, Montgomery, Shaw, Valois, and Winch—(11).

The Presiding Chairman informed the Committee that the Joint Chairmen have agreed to preside alternately insofar as practicable.

The Presiding Chairman presented the First Report of the Subcommittee on Agenda and Procedure which was read by Mr. Winch and considered by the Committee as follows:

Recommendation No. 1: Adopted without amendment.

On recommendation No. 2:

Agreed—That the words “from time to time” be inserted in the second sentence immediately following the words *a report to the Committee*.

Recommendation No. 2 was adopted as amended.

On recommendation No. 3:

Agreed—That the date *March 31st* be amended to read “*March 22nd*” and that the following words be added to the last sentence: “and to be approved by the Subcommittee.”

Recommendation No. 3 was adopted as amended.

Recommendation No. 4: Adopted without amendment.

On recommendation No. 5:

On motion of Mr. Cameron (*Hyde Park*):

Resolved—That the words “and individuals” be inserted immediately after the words *interested organizations*.

Recommendation No. 5 was adopted as amended.

Recommendation No. 6: Adopted without amendment.

Recommendation No. 7: Adopted without amendment.

On motion of the Honourable Senator Farris.

Resolved—That the First Report of the Subcommittee on Agenda and Procedure, as amended, which reads as follows, be now concurred in:

Your Subcommittee on Agenda and Procedure met at 11.00 a.m., Tuesday, February 23, and has agreed to present the following as its First Report:

Your Subcommittee discussed the procedure to be followed in arranging the Committee's Agenda and has agreed to recommend as follows:

1. That the Clerk of the Committee obtain as soon as possible 50 complete sets of the Proceedings and Report of the Royal Commission of the United Kingdom on Capital Punishment, 1949-53, for the use of the Committee.
2. That all letters addressed to the Minister of Justice, the Joint Chairmen, and members of the Committee, dealing with the matters before the Committee, be referred to the Clerk of the Committee.

The Clerk of the Committee will classify such correspondence for a report to the Committee *from time to time* and he will also acknowledge to each correspondent that such letters have been referred to the Committee.

3. That the Clerk of the Committee communicate at once with the Provincial Attorneys-General inviting them or their delegated alternates to indicate by *March 22nd* whether they wish to submit written briefs (50 copies), or attend personally before the Committee, or both, on the questions of Capital and Corporal Punishment and Lotteries. Included with this letter to the Attorneys-General there shall be a questionnaire on the said questions to be prepared by the Department of Justice *and to be approved by the Subcommittee.*
4. That the Department of Justice prepare an extract of the Criminal Code containing the provisions relating to Capital and Corporal Punishment and Lotteries.
5. That the Committee release a statement to the Press Gallery following the meeting on Wednesday, February 24, for the purpose of acquainting interested organizations *and individuals* that they are invited to indicate not later than March 31 next whether they wish to make representations to the Committee.
6. That the Minister and officials of the Department of Justice be prepared to make a statement on the existing law and its operation relative to Capital and Corporal Punishment and Lotteries at the meeting of the Committee scheduled for 11.00 a.m., Tuesday, March 2, 1954.
7. That, so far as practicable, there be two sittings weekly of the Committee to be held on either Tuesday mornings, Wednesday afternoons, or Thursday afternoons.

All of which is respectfully submitted.

The committee agreed that future reports of the subcommittee be prepared in sufficient quantity to provide a copy to each member of the Committee and of the Press.

On motion of Mr. Winch,

Ordered,—That the Clerk of the Committee write to the provincial Attorneys-General, asking if they can supply the information as to the number of homicides in their respective jurisdictions over the past twenty years with information as to the ultimate disposition.

Mr. Brown (*Essex West*) presented and read the press release recommended in the First Report of the Subcommittee.

After discussion thereon, on motion of Mr. Cameron (*Hyde Park*),

Resolved,—That the phrase beginning the second sentence of paragraph 2 which reads *All interested organizations in Canada* be amended to read "All interested organizations and individuals in Canada".

On motion of the Honourable Senator Bouffard,

Resolved,—That the press release as amended be adopted.

Mr. Brown (*Essex West*) accordingly released the following statement:

During the debates in both houses of parliament and since the various bills respecting the revision of the Criminal Code were introduced in this and the previous parliament, many different viewpoints have been expressed in and outside of parliament on the questions of capital and corporal punishment and lotteries. As a result of these varying views,

parliament has decided on the government's recommendation to refer these three questions to a joint committee of the Senate and the House of Commons for inquiry and report.

The joint committee is anxious to obtain the best factual representations that can be made available relating to the questions of capital and corporal punishment and lotteries. All interested organizations *and individuals* in Canada concerned with these three questions are accordingly invited to make their views known as soon as possible before March 31 next to the Joint Committee on Capital and Corporal Punishment and Lotteries, Parliament Buildings, Ottawa. In an endeavour to give this statement the widest possible circulation throughout Canada in the shortest possible time, the committee solicits the co-operation of all news disseminating agencies.

Agreed,—That the Press Gallery be given advance notice of witnesses scheduled to appear before the committee.

At 4.10 p.m., the committee adjourned to meet again at 11.00 a.m., Tuesday, March 2, 1954.

TUESDAY, MARCH 2, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m.

The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The honourable Senators Aseltine, Farris, Fergusson, Hayden, Hodges, and Veniot—(6).

The House of Commons: Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Dupuis, Fairey, Fulton, Garson, Lusby, Mitchell (*London*), Shaw, Shipley (*Mrs.*), Valois, and Winch.—(14).

The Presiding Chairman informed the Committee that the Clerk of the Committee would distribute copies of an Extract of the provisions of the present Criminal Code relating to capital punishment, corporal punishment and lotteries and, also, copies of the Second Report of the Subcommittee on Agenda and Procedure.

On motion of the Honourable Senator Farris,

Agreed,—That the said Extract be printed as an Appendix to the Minutes of Proceedings and Evidence.

The Presiding Chairman presented the Second Report of the Subcommittee which was read by Mrs. Shipley and considered by the Committee as follows:

On recommendation No. 1:

Agreed,—That this recommendation be considered *in camera* prior to adjournment of this meeting.

Recommendations No. 2 to 6 inclusive; Adopted without amendment.

On recommendation No. 7:

Agreed,—That the following words be added immediately following the date *March 10*: "or such other date as may be agreed upon".

Recommendation No. 7 was adopted as amended.

On recommendation No. 8:

Agreed,—That the following words be added immediately following the date March 10: “or such other dates as may be agreed upon”; and, also, that the word “psychiatrist” be substituted for the word *psychologist*.

Recommendation No. 8 was adopted as amended.

The Minister of Justice, the Honourable Stuart S. Garson, assisted by Mr. A. J. MacLeod, reviewed the provisions of the present Criminal Code relating to capital and corporal punishment and lotteries, and was questioned thereon section-by-section.

Agreed,—That the Minister of Justice would make a further statement after the Committee had heard the Ontario Attorney-General or his appointee.

The Committee continued its deliberations *in camera*.

The Committee resumed its deliberations in open session.

On motion of Mr. Cameron (*High Park*), it was, on division,

Resolved,—That the Second Report of the Subcommittee on Agenda and Procedure as amended, which reads as follows, be now concurred in:

Your Subcommittee on Agenda and Procedure met at 4.00 p.m., Monday, March 1, and has agreed to present the following as its Second Report:—

Your subcommittee recommends:

1. That a recommendation be made to both Houses to empower the Committee to retain the services of counsel; and, if the recommendation is approved, that the Committee's resolution of February 24, respecting the preparation of the questionnaire to be sent to the provincial Attorney-General, be amended by substituting the words “Counsel to the Committee” for the words *the Department of Justice*.
2. That in respect of breifs submitted:—
 - (a) by witnesses scheduled to be heard by the Committee: Copies be distributed in advance of appearance of witnesses, if possible, to members of the Committee and the Press Gallery, provided no release shall be made until witnesses concerned have been heard thereon by the Committee; and that such breifs be taken as read and printed in the evidence immediately preceding the hearing of the witness thereon;
 - (b) where no witnesses will appear before the Committee: Copies be distributed, after selection by the subcommittee, as soon as possible to members of the Committee and the Press Gallery; and that such breifs be printed, after selection by the subcommittee, as appendices to the Minutes of Proceedings and Evidence;
3. That no group, affiliated with a national organization which has made or will be making representations to the Committee, be heard unless the group states that it dissents from the views of the national organization;
4. That travelling expenses and per diem allowances be paid only to witnesses who appear at the specific request of the Committee;
5. That Counsel to the Committee, if appointed, prepare a list of organizations and individuals in Canada acquainted with the three questions before the Committee for submission to the

subcommittee at an early meeting, corresponding to the list at page 289 of the Report of the U.K. Royal Commission on Capital Punishment;

6. That the Parliamentary Library prepare a bibliography of all books dealing with Capital Punishment, Corporal Punishment and Lotteries for the use of the Committee;
7. That the Clerk of the Committee notify The Christian Social Council of Canada that the Committee is prepared to receive its brief on Lotteries and to hear its delegation on Wednesday, March 10, *or such other date as may be agreed upon*; and
8. That the Chairman and the Minister of Justice make inquiries towards inviting two of the following persons as witnesses for the meeting of the Committee on Wednesday, March 10, *or such other dates as may be agreed upon*. A Justice of the Supreme Court of Ontario, a nominee of the Attorney-General of Ontario, two lawyer members of the Panel on Capital Punishment of the Ontario Branch of the Canadian Bar Association, a psychiatrist, and a jail surgeon.

All of which is respectfully submitted."

At 12.35 p.m., the Committee adjourned to meet again at 4.00 p.m., Thursday, March 4, 1954.

A. SMALL,
Clerk of the Committee.

DISCUSSION ON ORGANIZATION

FEBRUARY 24, 1954

3:30 p.m.

The PRESIDING CHAIRMAN: Gentlemen, it is now five minutes after the time we were to meet and we have many more than a quorum here, so we will call the meeting to order. I think I should tell you first that the joint chairmen have agreed between themselves as to how they shall conduct themselves, subject always to being overruled by the members of the committee. We decided that we would alternate in presiding over the various meetings. Since I am presiding today, Mr. Brown (*Essex West*) will be presiding at the next meeting. That is the way we will carry on.

Following the last meeting, we set up a Subcommittee on Agenda and Procedure which met and discussed methods for proceeding with the business that we have before us, and we have its report with recommendations, which is presented to you as the first item of business. I would ask Mr. Winch to read that report, please.

Mr. Winch read the report (See Minutes of Proceedings).

The PRESIDING CHAIRMAN: Gentlemen, there is the report. It is open for discussion by the members of the committee.

Mr. SHAW: In discussing the dates, or the days of the week, upon which the committee might sit, why was it suggested that these meetings be held in the afternoons of two days rather than in the mornings?

The PRESIDING CHAIRMAN: Tuesday morning seemed to be a clearer morning, as Wednesday morning is usually taken up in a variety of other things, including, if I may mention it, caucuses. I understand that some party or other is always having a caucus on some Wednesday morning. Wednesday morning is always a big morning for committee meetings so far as the Senate is concerned. Wednesday afternoon is a free afternoon so far as the Minister's business in the House is concerned. We thought of Wednesday afternoon and Thursday afternoon. The committee can change those dates and undoubtedly will have to do so, as we have witnesses who indicate that they are willing to come here and make statements, and we will have to accommodate ourselves to their time. They may be available on, say, Tuesday afternoon and that may be the only time.

Mr. SHAW: My only reason for asking that question was that it seems to me that if we are able to hold these meetings in the mornings that is when they should be held, because otherwise it would make our attendance very difficult while the House is in session, particularly when we are discussing the Criminal Code, as we may be doing.

Hon. Mrs. HODGES: On Tuesday mornings the Senate Divorce Committee always meets, and two members of the committee, myself and Senator Ferguson, are on that Committee, and there is a shortage of personnel for that. You run up against difficulties everywhere, but I thought it was only right for me to point that out.

The PRESIDING CHAIRMAN: If we tried to resolve all the differences, we might end up by finding no particular date. I do not think even an evening date would be satisfactory to everybody.

Hon. Mrs. HODGES: I thought I should mention that.

The PRESIDING CHAIRMAN: Quite right. We have indicated that Tuesday, Wednesday and Thursday seemed to be the days on which we should hold the meetings. Within those limits, I think we will have to accommodate ourselves to some extent to the people who are going to submit evidence to us, and we will have to consider these, along with other activities that may be going on, in setting dates for meetings.

Hon. Mrs. HODGES: Is there any chance of doing anything on a Monday? Monday is usually fairly free.

The PRESIDING CHAIRMAN: The difficulty would be in getting a quorum before the evening.

Hon. Mrs. HODGES: I know that those who do not happen to live in the vicinity are not here.

Hon. Mr. ASELTINE: The Senate Divorce Committee sits on Monday also.

Hon. Mrs. HODGES: I was thinking of the afternoon.

Hon. Mr. ASELTINE: Saturday is about the only free day.

The PRESIDING CHAIRMAN: You would bring that up! Did you understand that the recommendation of your steering committee is simply that, as far as practicable, there will be two sittings weekly, on these days. If it is not practicable, we will have to do something else. We are not laying down any hard and fast rule. Once the committee gets going it will set the dates for subsequent meetings.

Mr. MONTGOMERY: It seems to me that those dates are as good as any to start with.

The PRESIDING CHAIRMAN: I think Tuesday and Thursday are the dates on which you would be more likely to have a full attendance.

Hon. Mr. BOUFFARD: What is the objection to Thursday morning?

The PRESIDING CHAIRMAN: Cabinet meetings. The Minister would want to be present. I think we will have to hold meetings on dates to suit people who want to make submissions, but as a courtesy to the Minister we would have to say that we have to do this, and you will have to govern yourselves so as to be available on those dates.

Hon. Mr. ASELTINE: Why not leave it open?

The PRESIDING CHAIRMAN: Some recommendation will have to be made.

Mr. WINCH: I appreciate what the hon. member has to say, but I believe, if it is advisable, that we should have some idea, because if we have not we do not know how to work in our other appointments. If we have some idea, we can tie it in with our other work.

The PRESIDING CHAIRMAN: We will be in a much better position possibly after the next meeting, when we have heard from some of the people with whom we have communicated; and then we will be able to set some program. Right now we are just dealing with something that may be of necessity changed.

Mr. BROWN: (Essex West): I think, since the question of the Minister being here has been brought into the discussion, that we should see that he is here on every occasion, because he is the one who has to pilot any legislation that may result from the deliberations of this committee through the House of Commons, and it is necessary that he should know what the opinion of this committee is.

Mr. FULTON: It seems to me that the feeling that influenced the steering committee is one that might prevail with the committee as a whole. That was that we felt we were going to have a very great volume of work, probably more than we would be able to handle, that is, in hearing the various people who might wish to be heard. Therefore, while realizing that some accommodation and flexibility had to be retained, what we do propose to do is decide ourselves

what days we will meet, and just proceed with our work on that basis as best we can; because we do not fix definite meeting dates. The feeling was that otherwise we would never get through the tremendous volume of consideration that this committee will have before it.

The PRESIDING CHAIRMAN: A motion would be in order.

Hon. Mr. FARRIS: I move that the report be accepted.

Mr. FULTON: I have one other comment to make—not respecting the days of meeting. A notice is inserted that the provincial attorneys-general should be invited to let us know not later than March 31 whether they wish to be heard.

Mr. WINCH: If I may say so, I think we are going to get a little mixed up. I will move that we take this report *seriatim* and discuss the recommendations one subject at a time.

The PRESIDING CHAIRMAN: How about paragraph one of the report?

Mr. BROWN (*Essex West*): I think we should draw to the attention of the clerical staff that for purposes of the committee's work there should be a copy of this report and any report coming from the subcommittee for all members of this committee, and as well there should be a number of copies prepared for the press, who have a very definite interest in this matter and perform a very valuable service. I do not think that the present report has been laid before members of the committee, has it?

Hon. Mrs. HODGES: No.

Mr. BROWN (*Essex West*): So it may be a little difficult to take it *seriatim* as you suggest.

Hon. Mr. FARRIS: Acceptance of these clauses does not preclude subsequent acceptance of other matters.

The PRESIDING CHAIRMAN: I will read each section and you will decide whether you want to pass it in that form or not:

1. That the clerk of the committee obtain as soon as possible 50 complete sets of the Proceedings and Report of the Royal Commission of the United Kingdom on Capital Punishment, 1949-53, for the use of the committee.

Some Hon. MEMBERS: Agreed.

The PRESIDING CHAIRMAN: Carried.

2. That all letters addressed to the Minister of Justice, the joint chairmen, and members of the committee, dealing with the matters before the committee, be referred to the clerk of the committee. The clerk of the committee will classify such correspondence for a report to the committee and he will also acknowledge to each correspondent that such letters have been referred to the committee.

In that connection we have settled on a form of letter acknowledging and thanking people for their consideration in making submissions, and I think the only thing that is not in this section is that possibly we should put the clerk on a time limit for giving us the result of his study of these briefs; and I would suggest that possibly the direction we should give him is that we would like to have it by March 31, if that meets with the approval of the committee.

Mr. FULTON: And then from time to time.

The PRESIDING CHAIRMAN: And from time to time thereafter.

Hon. Mr. ASELTINE: Why wait so long?

The PRESIDING CHAIRMAN: I think that respecting most of the submissions that have come in, if you will get half a dozen original ideas out of the whole bulk of them you will be doing very well, although they will be written up

differently and read differently. I don't think the committee will starve for want of work while we are waiting for them, but if the committee wants to shorten the time, fine. I only suggest March 31 to give time to pore through them all.

Mr. BROWN (*Essex West*): I would not suggest we put a time limit.

The PRESIDING CHAIRMAN: Very well, item two carries without any deadline. The clerk knows what our views are.

Mr. LUSBY: Is that intended to include all individual members of the committee?

The PRESIDING CHAIRMAN: To the extent that you wish. I think that if the letters are to be used in the committee the individual members who receive them should turn them over to the clerk, so that he will classify them in relation to the other submissions.

Carried.

3. That the clerk of the committee communicate at once with the provincial attorneys-general inviting them or their delegated alternates to indicate by March 31st whether they wish to submit written briefs (50 copies), or attend personally before the committee, or both, on the questions of capital and corporal punishment and lotteries. Included with this letter to the attorneys-general there shall be a questionnaire on the said questions to be prepared by the Department of Justice.

Mr. FULTON: Mr. Chairman, my suggestion is that I do not recall that the steering committee had set a deadline for March 31. It seems to me what you are asking the Attorneys-General to do is to let us hear from them as to whether they wish to come.

The PRESIDING CHAIRMAN: That is what it says here.

Mr. FULTON: We are not asking them to prepare their briefs and appear by March 31, but that we would like to hear from them before March 31.

The PRESIDING CHAIRMAN: We have a formal letter here which I will read. What we say is this:

The Special Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries is prepared to consider representations on the three questions referred to it for inquiry and report namely, whether the Criminal Law of Canada relating to (a) capital punishment, (b) corporal punishment or (c) lotteries should be amended in any respect and, if so, in what manner and to what extent.

The Committee has directed me to communicate with all Provincial Attorneys-General asking them, or their delegated alternates, if they wish to submit written representations and/or to attend personally before the Committee in respect of any or all of the three questions. A sample questionnaire is enclosed for your convenience in preparing your representations to the Committee.

The Committee would very much appreciate if, in your reply, you would indicate on which questions you wish to make representations and whether:

1. Only written representations will be made (if so, the Committee would appreciate 50 copies as soon as possible);
2. Only personal attendance will be made, without written representations, and in this case the Committee would appreciate knowing who the delegate or delegates would be with dates on which they could conveniently appear;

3. Both written and oral representations will be made. In this case the Committee would appreciate 50 copies of the written representations as soon as possible as well as being informed who the delegate or delegates would be with dates on which they could conveniently appear.

Your reply would be appreciated as soon as convenient but not later than March 31, when the Agenda and Procedure Sub-Committee will arrange suitable attendance dates.

Mr. FULTON: I would suggest not later than March 15 because we are going to be faced with some difficulty in making up our time-table, and if we are correct in anticipating there will be quite a number of organizations who wish to be heard as well as quite a number of individuals qualified in their fields whom we might want to invite, we will be faced with a heavy schedule. I would suggest we make up our time-table as soon as possible and if we suggest that they do not let us know until March 31 when they are able to come we are going to be faced with great difficulty in making up the time-table. Surely the Attorney-General's department will be able to let us know when they would like to be here. Would it be too much to ask them to let us know not later than March 15?

Mr. BROWN (*Essex West*): You were in the House and you have heard some of the difficulties they have had with some of the provinces in getting replies to certain letters. I do not think we should be too hard on them.

Mr. FULTON: I am sure that the Attorney-General in our province would not find it too difficult to make up his mind before March 31 whether he wished to come down or send someone down here. The point raised in the house was one which was political, and I do not think this has any political implication.

The PRESIDING CHAIRMAN: Why not make it March 22?

Mr. BROWN (*Essex West*): We are not going to make a deadline anyway.

Hon. Mr. FARRIS: Why not say as soon as convenient?

The PRESIDING CHAIRMAN: As soon as convenient, but not later than March 31.

Hon. Mr. FARRIS: Why put that foolish idea in their heads.

Hon. Mrs. HODGES: I do not think that "convenient" is the word. I would say "as soon as possible".

Hon. Mr. ASELTINE: I am in favour of putting a date in. "As soon as possible" does not mean very much.

The PRESIDING CHAIRMAN: I think you have to set an outside date. Otherwise these things will be set aside on their calendar.

Hon. Mrs. HODGES: I second Mr. Fulton's motion that it be March 15. If we get the majority in by the 15th maybe we will have done something.

Hon. Mr. BOUFFARD: It may take a little time in Quebec—

Hon. Mr. ASELTINE: All of the provincial legislatures are sitting now.

Hon. Mr. BOUFFARD: They are piled up with legislation and will be having meetings with council. They will probably wait to have a meeting of council on this matter—

The PRESIDING CHAIRMAN: Why not make it March 22?

Mr. LUSBY: If they are submitting written representations they should come in by that date.

Mr. BROWN (*Essex West*): Even if we do get a lot of briefs we may not want to hear them all anyway. We may just want to read their briefs and would not invite them to appear personally if we do not feel that they will have something to contribute.

Mr. LUSBY: If they wished to submit a brief did you mean that they will not be able to attend?

The PRESIDING CHAIRMAN: No.

Mr. WINCH: As an apparent middle-roader, I move in amendment that it be the 22nd.

The PRESIDING CHAIRMAN: Those in favour?

Carried.

Mr. FULTON: Then, would you make it clear that this questionnaire to be sent out which you are asking be prepared by the Department of Justice be at least approved by the steering committee.

The PRESIDING CHAIRMAN: It will be and that will be ready certainly by next Tuesday and I would say it will deal with the three headings.

The next is item 4: "That the Department of Justice prepare an extract of the Criminal Code containing the provisions relating to capital and corporal punishment and lotteries."

Carried.

That is for the convenience of the members of the committee.

The 5th is: "That the committee release a statement to the press gallery following the meeting on Wednesday, February 24, for the purpose of acquainting interested organizations that they are invited to indicate not later than March 31 next whether they wish to make representations to the committee."

Agreed.

Mr. MONTGOMERY: Do you not think that that is putting it on quite a way, the question of the date?

The PRESIDING CHAIRMAN: Some of them, who are panting with eagerness to make themselves heard before this committee, will get here very, very promptly. It is the ones who may have something useful whom we may have to invite. I am thinking of civil servants, or prison officials and prison doctors for example and people like that. We have got to make a study of those people to decide which ones we would like to have here.

Hon. Mr. ASELTINE: Ministers have already preached on the subject and I am not sure how much influence there has been. I do not know whether they are trying to influence the committee or not.

The PRESIDING CHAIRMAN: Shall item 5 carry?

Carried.

Then, we have a draft of a press release to which Mr. Brown will refer shortly.

Then, 6: "That the minister and officials of the Department of Justice be prepared to make a statement on the existing law and its operation relative to capital and corporal punishment and lotteries at the meeting of the committee scheduled for 11.00 a.m. Tuesday, March 2nd, 1954."

Carried.

7: "That, so far as practicable, there be two sittings weekly of the committee to be held on either Tuesday mornings, Wednesday afternoons, or Thursday afternoons."

Carried.

Then, with the changes we have made, is this report of the sub-committee adopted by the committee?

Carried.

Hon. Mr. FARRIS: I was asking Mr. Winch if it would not be a good thing to have information about the number of executions there have been in Canada and the sentences that have been commuted and he told me that was difficult to obtain.

The PRESIDING CHAIRMAN: We will have that. One thing that will be difficult is to get any indication of the number of homicides in Canada. I notice that they had that information in the evidence before the Royal Commission in England, but I doubt if we could get that here. But, we certainly would have the number of convictions for murder, the number executed, and the number whose sentences were commuted.

Hon. Mr. FARRIS: And can we obtain information as to why?

The PRESIDING CHAIRMAN: We could quite probably address a question to the Minister or departmental officials when they are here.

Mr. SHAW: Why do you suggest that it might be difficult or impossible to secure the information concerning the number of homicides?

The PRESIDING CHAIRMAN: The Dominion Bureau of Statistics does not seem to have adequate information on that.

Mr. SHAW: Would not the Department of Justice or the R.C.M.P. have that?

Mr. WINCH: We were all surprised to learn that no returns are made by the provinces to any central agency on this matter at all.

The PRESIDING CHAIRMAN: You would have to go through police records probably in every city, town and village.

Hon. Mrs. HODGES: Is it not classified in the provinces by statistics?

Mr. BROWN (*Essex West*): The death is a vital statistic, but the hanging is not.

Mr. FAIREY: Would each province have that information?

The PRESIDING CHAIRMAN: There is no one source readily available where we would be able to get it, but we might get it through a number of sources.

Mr. CAMERON: Would not the provincial Attorneys General have that information?

Mr. FAIREY: Could we write to each individual Attorney General and ask if he can supply that information?

The PRESIDING CHAIRMAN: I think that is a good idea.

Hon. Mr. FARRIS: How far back do you intend to go?

The PRESIDING CHAIRMAN: I do not think we need go as far back as they did in England. They went back to I think 1900. I think we should go back about 10 years.

Hon. Mr. ASELTINE: I thought perhaps you were going back to Confederation.

The PRESIDING CHAIRMAN: If so we should advance the date of Confederation. We will get what we can.

Hon. Mr. ASELTINE: How will it help?

The PRESIDING CHAIRMAN: I think that there is some value in getting the information as to the number of homicides and the number who are brought to justice.

Mr. WINCH: There is also an angle which is important. It is important that we get all the information we can on account of the contention made by some that there are occasions when juries do not want to convict because of the existence of capital punishment, so if we can go back 10 years and can find the number of times that the jury have not convicted it might be of some use; but I would suggest that we go back farther than 10 years—I would suggest 20 years—in asking the Attorneys General to give us that information.

The PRESIDING CHAIRMAN: One possibility is the threat of a man being hanged acting as a deterrent. If the figures of the unsolved homicides are very, very great, I do not know what conclusion you might draw.

Hon. Mr. FARRIS: Then I think it is very important that we should know how many sentences have been commuted and the reason why.

The PRESIDING CHAIRMAN: We have discussed that and we will have that I am sure.

Mr. WINCH: I would like to move that the clerk write to the provincial Attorneys General and ask if they can supply the information as to the number of homicides in their respective jurisdictions over the past 20 years with information as to their disposition.

The PRESIDING CHAIRMAN: The ultimate disposition?

Mr. WINCH: Yes.

Carried.

The PRESIDING CHAIRMAN: The next item on the agenda is the presentation of the press release. Before Mr. Brown deals with that, the only observation I want to make with respect to the press release is that I think it is very important that we should get as wide coverage as possible of the fact that this committee is sitting down to work on these suggestions. It would be surprising, even with all the publicity you can get, the number of people who might say afterwards that they did not know that the committee was sitting and that they had information to lay before the committee. For myself, it seems to me that the type of material that we would favour before this committee would be that which is factual. I do not know that we are too concerned about opinions that people have because even cranks have opinions and they are not supported by any facts. That is, I think that those who have a factual basis for the submissions they are going to make to us are the people we would like to hear from, but where they are in the various parts of Canada we cannot be too sure at the moment, and that is why we have to depend on the press to bring our work to their attention.

Mr. SHAW: In the case of lotteries that might be a bit embarrassing.

The PRESIDING CHAIRMAN: There is no obligation on them to speak. You mean, the best evidence would not come forward?

Mr. SHAW: I think you are right.

Mr. BROWN (*Essex West*): Mr. Chairman, I do realize that we as a committee have a grave responsibility and, I am sure, an interesting duty to perform on this committee, because we are dealing with the very lives of some of our subjects, and not only the lives of subjects but the families concerned and the wishes of the community at large; and consequently we are most anxious that this committee be furnished, as Senator Hayden has stated, with the most factual information we can get. We have already received a number of communications and some briefs, and we have indicated to the committee, as I pointed out to the subcommittee, the serious interest by some persons—psychiatrists and others—who have factual information and who want to come before the committee. Consequently, we do need to inform the public at large that we are most anxious to hear those who can give us facts, and for that reason the committee has drafted a short press release, which is merely a form to indicate to the public that we are anxious that representations be made to us. Now, whether we would ask the person making the presentation to come to Ottawa to appear before the committee would have to be decided at a later date. This press release will at least inform the public that we have the desire to hear from them.

Hon. Mrs. HODGES: Are we going to hear the press release?

Mr. BROWN (*Essex West*): We regret that we have not as yet got going in the proper manner.

Hon. Mrs. HODGES: I beg your pardon. I thought you said you had released it to the press.

The PRESIDING CHAIRMAN: No, we have the release, which I am now going to read, if it is your pleasure. We are groping along the way trying to find out the best and simplest way of proceeding in this committee. The press release is as follows, and I will read it if it pleases you:

During the debates in both houses of parliament and since the various bills respecting the revision of the Criminal Code were introduced in this and the previous parliament, many different viewpoints have been expressed in and outside of parliament on the questions of capital and corporal punishment and lotteries. As a result of these varying views, parliament has decided on the government's recommendation to refer these three questions to a joint committee of the Senate and the House of Commons for inquiry and report.

The joint committee is anxious to obtain the best factual representations that can be made available relating to the questions of capital and corporal punishment and lotteries. All interested organizations in Canada concerned with these three questions are accordingly invited to make their views known as soon as possible before March 31 next to the Joint Committee on Capital and Corporal Punishment and Lotteries, Parliament Buildings, Ottawa.

In an endeavour to give this statement the widest possible circulation throughout Canada in the shortest possible time, the committee solicits the co-operation of all news disseminating agencies.

Mr. BROWN (*Essex West*): I might add, Mr. Chairman, that while it says here "March 31", I am sure that if there is any valuable and factual presentation made after that date we would be—while we are not advertising the fact—most pleased to accept it. I think too we can express our thanks to the press in Canada at this time for the assistance they have given so far. In fact, it has been a little too anxious. I think both Senator Hayden and I were appointed Joint Chairmen of this committee in the press before we even had a meeting, and much to our surprise. But I do appreciate very much what has appeared in the press so far; and we know that the people of Canada are being adequately informed as to the proceedings. Thank you very much.

The PRESIDING CHAIRMAN: Is there any comment on the proposed press release?

Mr. CAMERON: I suggest you add the words "and individuals"—"organizations and individuals".

The PRESIDING CHAIRMAN: Yes, that is a good idea.

Mr. BROWN (*Essex West*): "All interested organizations and individuals" are accordingly invited. Is that what you mean?

Mr. CAMERON: Yes.

The PRESIDING CHAIRMAN: Yes. Is the committee satisfied with that form of release?

Carried.

On the next item, while we require a motion, we feel that in regard to the names of witnesses who will be coming from time to time—as we know of them in subsequent sittings of the committee—we should acquaint the members of the Press Gallery beforehand of the names of those witnesses. Is that the pleasure of the committee?

Some Hon. MEMBERS: Agreed.

The PRESIDING CHAIRMAN: Carried.

The chair is ready to entertain a motion to adjourn.

Carried.

The committee adjourned.

EVIDENCE

TUESDAY, March 2, 1954,
11.00 a.m.

The PRESIDING CHAIRMAN: Gentlemen, we have a quorum.

Mr. FULTON: Mr. Chairman, on a question of privilege I think I should explain the absence of one of our colleagues, Mr. Montgomery, who was unfortunately taken to the hospital last night. We do not know how long he will be in hospital, and we have not had time to make any change in our personnel. I would appreciate it if the press will give no prominence to the matter, but I think it should be on the record because he may be absent for some time.

The PRESIDING CHAIRMAN: Mr. Montgomery was a valuable member of the criminal law committee last year and has taken a keen interest in the committee this year. I am certain I express the feelings of all members of this committee when we wish him a speedy recovery and trust that his illness is not serious.

You have before you documents which are the excerpts from the present Criminal Code dealing with the three subjects of capital punishment, corporal punishment and lotteries. A motion would now be entertained to have these appended to the minutes of proceedings and evidence of today's session.

Mr. FULTON: In taking up the recommendations of the committee, Mr. Chairman, would you propose to deal with them clause by clause?

The PRESIDING CHAIRMAN: That would be part of the presentation of the Minister, I believe, today.

In order to have these on the record it is moved by the Hon. Mr. Farris, seconded by Mr. Lusby, that these excerpts be made a part of the proceedings today.

Carried.

(See Appendix)

The next item is the report of the subcommittee on agenda and procedure. Mrs. Shipley.

Mrs. SHIPLEY: Do I read this clause by clause?

The PRESIDING CHAIRMAN: Read it as is.

Mrs. SHIPLEY: Your subcommittee on agenda and procedure met at 4.00 p.m., Monday, March 1, and has agreed to present the following as its second report:—

Your subcommittee recommends:

1. That a recommendation be made to both houses to empower the committee to retain the services of counsel; and, if the recommendation is approved, that the committee's resolution of February 24, respecting the preparation of the questionnaire to be sent to the provincial Attorneys-general, be amended by substituting the words "counsel to the committee" for the words the *Department of Justice*.

2. That in respect of briefs submitted:—

- (a) by witnesses scheduled to be heard by the committee: copies be distributed in advance of appearance of witnesses, if possible, to members of the committee and the press gallery, provided no release

shall be made until witnesses concerned have been heard thereon by the committee; and that such briefs be taken as read and printed in the evidence immediately preceding the hearing of the witness thereon;

- (b) where no witnesses will appear before the committee: copies be distributed, after selection by the subcommittee, as soon as possible to members of the committee and the press gallery; and that such briefs be printed, after selection by the subcommittee, as appendices to the minutes of proceedings and evidence;

3. That no group, affiliated with a national organization which has made or will be making representations to the committee, be heard unless the group states that it dissents from the views of the national organization;

4. That travelling expenses and per diem allowances be paid only to witnesses who appear at the specific request of the committee;

5. That counsel to the committee, if appointed, prepare a list of organizations and individuals in Canada acquainted with the three questions before the committee for submission to the subcommittee at an early meeting, corresponding to the list at page 289 of the Report of the U.K. Royal Commission on Capital Punishment;

6. That the parliamentary library prepare a bibliography of all books dealing with capital punishment, corporal punishment and lotteries for the use of the committee;

7. That the clerk of the committee notify the Christsian Social Council of Canada that the committee is prepared to receive its brief on lotteries and to hear its delegation on Wednesday, March 10; and

8. That the chairman and the Minister of Justice make inquiries towards inviting two of the following persons as witnesses for the meeting of the committee on Wednesday, March 10: a justice of the Supreme Court, a nominee of the attorney-general of Ontario, two lawyer members of the panel on capital punishment of the Ontario branch of the Canadian Bar Association, a psychologist, and a jail surgeon.

All of which is respectfully submitted.

SALTER A. HAYDEN,
DON. F. BROWN,
Joint Chairmen.

The PRESIDING CHAIRMAN: Moved by Mrs. Shipley, supported by Mr. Boisvert. Now, shall we consider it clause by clause.

Mr. FULTON: Agreed.

Hon. Mr. ASELTINE: In connection with item number 1, I would like to know why it was found necessary by the subcommittee to recommend that counsel be appointed to assist this committee which is composed of a number of lawyers from all parts of Canada who have had considerable practice in criminal matters. It seems to me that counsel would be paid probably a considerable fee per diem, a cost to the government of Canada of a great deal of money. I am personally opposed to the appointment of any counsel. I think that the lawyers present and the laymen of the committee are fully qualified to deal with this matter without going to that very considerable expense.

Mr. FULTON: Hear! Hear!

Hon. Mr. ASELTINE: I am wondering why the subcommittee found it necessary to have counsel appointed. I do not think this is a committee where counsel should be appointed at all, and I am quite opposed to the idea.

The PRESIDING CHAIRMAN: Is there any further comment?

Hon. Mr. GARSON: Mr. Chairman, perhaps I should offer a word of explanation on this point. As a matter of fact in the Criminal Law branch of the Department of Justice we are working shorthanded: at the moment we are short two men, one was the head of our Criminal Law section. He was a former deputy attorney general of the province of Manitoba who did excellent service for us for quite some time, and then he returned to Winnipeg at double the salary we were paying him to go into private law practice. It is very difficult to replace men of his experience; and up to the present time we have not been able to replace him. In addition to that another member of our staff especially versed in criminal law has undergone an operation. In this situation the government is not out of pocket. We are saving the salary of this other man who has not been replaced. If these men were here we could have taken care of this particular work, such as preparing the questionnaire, without getting outside counsel.

Hon. Mr. FARRIS: I understand that Mr. Aseltine is ready to do it for nothing.

Hon. Mr. ASELTINE: Probably they have not enough confidence in me.

Hon. Mr. GARSON: It is true I think of the members of the other place and the House of Commons: that they normally have quite a lot of work to do. I know that is certainly true in my own case. So unless there is some person who is paid to act as legal secretary to the committee between and during meeting the work of the whole committee will be slowed up. On that account I think we would make more progress if we had a capable counsel to assist us, not an older man a leader of the bar—but some person who would be able to look after such matters as this very question of adapting the questionnaire which was used by the British commission, to our needs here. Meanwhile, we are doing without a senior man in the criminal law branch of the Department of Justice because such men cannot be picked up on the street corner. But for that probably we would not have had to retain counsel.

Mr. MITCHELL: Is the minister in the position to say what the rate of remuneration will be?

The PRESIDING CHAIRMAN: That, Mr. Mitchell, will be discussed *in camera* at the close of this meeting.

Mr. CAMERON: Is what you have in mind more of the nature of a legal secretary than a counsel?

Hon. Mr. GARSON: Yes.

The PRESIDING CHAIRMAN: I do not think that the hon. senator recognizes the amount of work involved here. I do not know of any member of this committee who is prepared to put in the time required of such a counsel.

Hon. Mr. ASELTINE: I was of the opinion that this was to be done by the Department of Justice.

Hon. Mr. GARSON: The hon. senator is quite right. Mr. MacLeod who is with us here today is more than competent to do this work for the committee. But he is superintendent of bankruptcy, head of the commutations branch of the Department of Justice, and is helping me in the House of Commons on the Criminal Code. It is quite impossible for him in addition to do any more work on this matter. Because of that fact we need this other help. Otherwise we could take this work in our stride quite easily. However, when you have three experienced men and are short two of them, it is pretty difficult to take on new work. The idea is not to have some person who will come here and cross-examine witnesses on behalf of the committee; we have talent here to do that for ourselves: but we do need someone to do this work that is required to be

done after the committee disperses so that when we meet again we have that attended to. As the hon. senator says, of course the work should be done by the Department of Justice; but it so happens that we are short of staff at the moment and meanwhile the taxpayers of Canada are saving the salaries of the men we are short.

Mr. CAMERON: Would it not be better to change the name "counsel", and then when we want someone in the category of legal counsel we could have someone to advise us, rather than put this person we are talking about in the status of a counsel of the committee?

Hon. Mr. GARSON: I do not think a great deal turns on the name. We could call it secretary.

Mr. CAMERON: Today "counsel" means counsel.

Hon. Mr. GARSON: I would think that the man we would obtain should be capable of being a counsel. I think it would be better. It is pretty hard to foretell, but my own view would be that one good man would be quite sufficient for both purposes having regard to the fact that we have a number of able and experienced lawyers on the committee.

Hon. Mr. ASELTINE: The last joint committee I sat on was the one with regard to maintaining prices, and counsel for the committee sat there and asked all the questions and did all the cross-examining and that kind of thing.

Mr. FULTON: Not all of it by any means, senator.

Hon. Mr. ASELTINE: I was of the opinion that that was what you had in mind.

Hon. Mr. GARSON: No. This is to facilitate the work of the committee so that there will be no hold-up in getting this legal work done between meetings. Unless we have some person specifically assigned to do this work I am afraid that it will not be done within the time in which it should be; because if we have a meeting, say, today and are to meet a week from now it means that whoever is in charge will have to get his work under way soon after we adjourn so that it will be ready when we meet again.

Mr. FULTON: I appreciate the situation at the moment in the Department of Justice, but I wonder if it is possible for the committee clerk who is a very competent—

The PRESIDING CHAIRMAN: Just a minute. I know that the committee clerk worked last night—

Mr. FULTON: You do not know what I am going to say yet.

The PRESIDING CHAIRMAN: Last night the committee clerk worked until one o'clock.

Mr. FULTON: I made a comment and I think I am entitled to finish it. It seems to me that the committee clerk who is an able man and has the resources of the committee branch of the House behind him—and I am sure the committee branch of the Senate would be glad to render their assistance—might, with the help of the Department of Justice, do the work which the minister has outlined here for the committee counsel. Apparently this person is not to be a full-time counsel to advise us and conduct cross-examination; he is more for the purpose of preparing the questionnaires and records, and I should think that the clerk with the assistance of the Senate and the House of Commons committee branches could go to the Department of Justice and get their assistance on the matter and do the actual work without the necessity of employing counsel.

Hon. Mr. GARSON: I am afraid I would be leaving quite a wrong impression with the committee if I suggested that the Department of Justice can provide any assistance at all in this field at the present time. We have lost the head of

the Criminal Law branch of our department because we could not come anywhere near matching the income he could make in private practice—and this is the second senior man we have lost in the same way in the last nine months—for these reasons we cannot begin to prepare all the technical material which will be required by the committee. In view of that fact we would be misleading the committee if we said we could perform the extra work that my hon. friend is suggesting. The Department of Justice is an economically managed department. We are not overstaffed. It is for that reason that we felt that if the committee is to get the services it must get to function properly it should have a legal secretary.

Hon. Mr. ASELTINE: Can the minister tell me about how long it is proposed that this committee will carry on?

The PRESIDING CHAIRMAN: That will depend pretty much on you, Senator, in part. I do not mean you personally.

Hon. Mr. ASELTINE: How much would it cost to hire counsel at so much a day?

Hon. Mr. GARSON: The hiring would be at so much per day for the days he works. One of the advantages of getting an outside man is that he will not be needed every day of the week by any means, and he can plan his time so he will be available when we need him, and that is what we will pay him for. There is no other way of meeting it. It is not as though it will cost the Department of Justice a great deal of money, because all the time this is going on those of us who are left in the Department of Justice are doing the work of the man who has been replaced.

Hon. Mr. ASELTINE: He will not be paid for 30 days a month?

Hon. Mr. GARSON: No, he will be paid for the days he works.

The PRESIDING CHAIRMAN: Just a word about the work of the clerk of the committee. I want to make it clear that so far as the clerk is concerned, in my opinion it is physically impossible for him to do any additional work. I know personally that since our last meeting he has spent a great deal of time—I know that because I have had to spend a great deal of time on the work of this committee apart from the committee meetings—and I know that last night at ten o'clock our clerk was still engaged on the work of this committee; so when you speak about putting further duties on his shoulders I think it is physically impossible.

Mr. SHAW: Is it not a fact that when the Criminal Law committee sat last spring one individual from the minister's department was kept pretty busy doing this type of work and the work of the committee was expedited? I know there is hardly an individual member here who would have time to do the type of work that such a person would do, and I think it is necessary that that work be done. I support the proposition.

Mr. FAIREY: I agree.

Hon. Mr. GARSON: We are working in the department today with only one of the three men that we had last spring. Last spring there was no question but that our man did a lot of this sort of work, and we could spare him; but that one man, Mr. MacLeod, is Superintendent of Bankruptcy and head of the Remission Service, assists me in the House of Commons work on the Criminal Code and attends here in connection with this committee. To ask him to do any more is just lunacy.

Mr. FULTON: How about paying him what we would otherwise be paying the counsel?

Hon. Mr. GARSON: It is not physically possible. One can work 16 hours a day, but one cannot work day and night.

The PRESIDING CHAIRMAN: If there is no further comment, we will postpone this matter until we go into camera. Any comment on paragraph 2?

Hon. Mr. ASELTINE: Carried.

Mr. CAMERON: What is meant by: "copies to be distributed in advance"; in advance of what?

Hon. Mr. HAYDEN: Of the appearance of witnesses.

The PRESIDING CHAIRMAN: In respect of briefs to be submitted, copies are to be distributed in advance; that is, copies of the briefs to be presented by the witnesses are to be distributed in advance.

Carried.

Recommendation 3.

Carried.

Recommendation 4.

Carried.

Recommendation 5:

That counsel to the committee, if appointed, prepare a list of organizations and individuals in Canada acquainted with the three questions before the committee for submission to the subcommittee at an early meeting, corresponding to the list at page 289 of the Report of the U. K. Royal Commission on Capital Punishment;

Mr. FULTON: Could we leave this one stand also, Mr. Chairman, or do you think the words "if appointed" would cover it?

Hon. Mr. HAYDEN: This only says what he will do if appointed. Are we in agreement on that?

The PRESIDING CHAIRMAN: Is it agreed?

Carried.

Recommendation 6. We run into difficulty here. The clause says:

That the parliamentary library prepare a bibliography of all books dealing with capital punishment, corporal punishment and lotteries for the use of the committee;

Now, Mr. Hardy, Parliamentary Librarian, is here today. If it meets with your approval, I would like to have him come forward to explain his objection to this recommendation.

Mr. F. A. HARDY (Parliamentary Librarian): Since I have heard this recommendation I find it much more simple than I thought. I had been under the impression that we were to prepare a complete bibliography on these various subjects: capital punishment, corporal punishment and lotteries, which would mean not only books but periodicals, documents of royal commissions, etc., and Hansards of all the various countries, which would be a tremendous task. I have here, for instance, a sample bibliography. You see the size of it. Under the conditions we are working in now in the library, to do what I thought was required would be a terrific task and it would take a long while, but since I have heard the word used here, "books", it would certainly narrow it down and I do not see any reason why we should not prepare a bibliography on books. That has taken away my apprehension.

The PRESIDING CHAIRMAN: That has stolen your thunder?

Mr. HARDY: Yes. We can prepare a bibliography on books.

The PRESIDING CHAIRMAN: Is that agreeable to the committee? If so, it will be carried.

Carried.

Thank you very much, Mr. Hardy.

Recommendation 7.

Mr. FULTON: There is a conflict between 7 and 8.

The PRESIDING CHAIRMAN: "7. That the clerk of the committee notify the Christian Social Council of Canada that the committee is prepared to receive its brief on lotteries and to hear its delegation on Wednesday, March 10;" We may require some leeway on that. It may be that the Christian Social Council is not prepared. We have not contacted them yet, but if you will give us a little leeway on that we will do so at the earliest possible date.

Mr. FULTON: May I point out that there is a conflict between 7 and 8, in that you have the same date for both parties? I think that one date should be changed. Weren't we indicating March 17 for the Ontario panel?

The PRESIDING CHAIRMAN: It was suggested in the subcommittee, but we are trying to get witnesses of some type. We hope that we will have, when we come to No. 8, some suggestions to make for next Tuesday.

Mr. FULTON: Tuesday will be the 9th.

The PRESIDING CHAIRMAN: Well, shall we say "Wednesday, March 10, or such other date as is convenient"?

Mr. FULTON: In paragraph 7?

The PRESIDING CHAIRMAN: Both paragraphs 7 and 8. Is that amendment agreeable to the members of the committee, "March 10, or such other date as may be agreed upon"?

Agreed.

Recommendation 8:

That the chairman and the Minister of Justice make inquiries towards inviting two of the following persons as witnesses for the meeting of the committee on Wednesday, March 10:—

and there again we will have "or such other dates as may be convenient"—

a justice of the Supreme Court, a nominee of the attorney general of Ontario, two lawyer members of the panel on capital punishment of the Ontario branch of the Canadian Bar Association, a psychologist, and a jail surgeon.

Hon. Mr. FARRIS: That means a justice of the Supreme Court of Ontario?

Hon. Mr. GARSON: Yes.

Mr. DUPUIS: You indicated that you are going to invite a nominee of the attorney general of Ontario. I understand that would be a representative of the attorney general of each province, I suppose. I do not want there to be any distinction between the provinces.

The PRESIDING CHAIRMAN: What we are trying to do is to get a foundation for our study. We want to find out what the procedure is from the time in the magistrate's court right up to the appeal court, and for that reason we are asking some judge. The minister might have a word on that. I think we have contacted one of the judges.

Mr. DUPUIS: As far as a justice of the Supreme Court is concerned, it is all right with me, but I wonder if you are going to limit it to a representative of the attorney general of Ontario, one province only?

Mr. WINCH: I think there is a misunderstanding here. All the attorneys general have already been written to. This is just to get a picture of the procedure from the nearest attorney general, just on procedure alone.

The PRESIDING CHAIRMAN: It is merely to get a foundation for our work.

Mr. DUPUIS: That satisfies me.

Mr. FULTON: That should be "Supreme Court of Ontario".

The PRESIDING CHAIRMAN: Yes. Do you want to have a word on that, Mr. Minister?

Hon. Mr. GARSON: Yes, if I may. Over the years I have had considerable correspondence with interested individuals, newspaper editors and the like, with regard to what seemed to me to be a misunderstanding on their part as to what happens in these capital cases I therefore agree with the view of the subcommittee that the best way—especially for the lay members of the committee—to get a working understanding as to the manner in which our present law operates would be to have at the very beginning of our inquiry a nominee of the attorney general of Ontario come here to give an outline of the case of John Doe, who is accused of a capital offence, of what happens to begin with when he is apprehended by the police and brought up before the magistrate, of how his case comes before judge and jury, and so on. The only reason for choosing Ontario is that it is the closest and handiest province, and has a large and representative volume of criminal work. We could get a counsel from the attorney general's department of Ontario who has had experience as crown counsel both in jury trials, also in pleading cases before the courts of appeal, who could tell us step by step what happens in a typical capital case. After we have heard from him, I am sure we can get a judge from the Supreme Court of Ontario, either the trial division or the appellate division who could go over the same ground from a judge's standpoint. I think perhaps it would be better to get a judge who is now in the appellate division, but who has had long years of experience in the trial division, proceeding on trials, and who therefore could trace the course of a typical capital case through the jury trial itself and can then tell us from his appeal experience in the court of appeal when an appeal is taken against the jury's verdict. If we could get those two officials before us, I am sure we would all have—particularly the lay members—a much better idea as to just how the text of these sections of the Criminal Code we have been considering will operate in real life in the trial of an accused. After that, if you will bear with us, I thought that after the course of the trial had been traced from the laying of the information against the accused to his conviction, and his appeal had been dismissed and he was awaiting the carrying out of the penalty, we might then make a statement to the committee indicating the way in which the question of commutation of sentence is considered by the Department of Justice. In this way you would have a clear picture of the operation of the present law from the beginning until the very end, either in the form of a commutation or the carrying out of the sentence. We thought we could get, as has been suggested, a jail surgeon who could tell us how the sentence is carried out.

Hon. Mr. ASELTINE: From the cradle to the grave?

Hon. Mr. GARSON: A complete picture. My experience has been that there is quite a small percentage of laymen who really understand how the present law operates, I do not see how we can intelligently set about to change the law unless we know first of all what it is and how it works.

Mrs. SHIPLEY: It might be as well to mention how the confusion as to the judges arose. Your steering committee would like to have that program that is published here, if possible, but the time was so short that we thought that if we could not obtain them we would get someone on lotteries. If we can get them, we will.

Mr. FULTON: Could we have a word from the minister as to whom he has in mind from the Supreme Court of Ontario?

The PRESIDING CHAIRMAN: That will be discussed by the subcommittee, if it is agreeable.

Hon. Mr. GARSON: There is this difficulty in prematurely indicating the identity of both the judge and the lawyer we were seeking—and the same difficulty arises in connection with appointments to a royal commission—that if we give any indication as to who they are and then end up with somebody else, it would make it appear that the second man was a second choice, and that would not be helpful.

Mr. SHAW: I have two questions. Is it the intention to jump from lotteries to corporal punishment to lotteries to capital punishment, to jump back and forth and all over the board? Personally, I think that if possible that should be avoided.

The PRESIDING CHAIRMAN: I think your aim is quite desirable, but if we have a witness coming here who has knowledge of the three matters and he wants to make a presentation on all three, it would be rather useless to bring him back three times.

Mr. SHAW: That is a very special case.

The PRESIDING CHAIRMAN: We are trying to separate these as much as possible, but we cannot do it on all occasions.

Mr. SHAW: I would suggest that, as far as possible, we take one and follow it through.

Hon. Mr. HAYDEN: All the attorneys general may want to make presentations on the three subjects at one time.

Mr. SHAW: My second question, Mr. Chairman. Can I assume, referring to paragraph 8, for example, that we will not confine our hearing to March 10; that other sittings will be made available? There will not be time to crowd those three into the course of one sitting.

The PRESIDING CHAIRMAN: A great deal will depend, firstly, on the behaviour of the committee and, secondly, on the time available to the witness and, thirdly, on what other plans we may have prepared. We will try to meet the convenience of the committee on all occasions.

Mr. SHAW: All these subjects are so extremely important that there should not be any attempt to rush things; that is, on our part. If we cannot get all we want from them on March 10, certainly I would hope that we would make other sittings available.

The PRESIDING CHAIRMAN: We would try to meet the convenience of the committee, I am sure. I cannot go beyond that. We will have to meet the conditions as they arise. If there is no further comment on section 7—

Hon. Mr. GARSON: Would it not be better to use the word “psychiatrist” instead of “psychologist”?

The PRESIDING CHAIRMAN: Yes, I think so.

Recommendations 7 and 8 carried.

Mr. FULTON: As amended.

The PRESIDING CHAIRMAN: As amended. The report will not be adopted until we have gone into camera and discussed the other matter.

Now, we have with us today the Hon. Mr. Stuart Garson, Minister of Justice, and you have before you excerpts from the Criminal Code relating to the three subjects of capital punishment, corporal punishment and lotteries. If it is your pleasure, I will call upon the Minister of Justice, who has some presentation to make.

Hon. Mr. GARSON: Mr. Chairman, I do not know whether it is accurate to say that I have a presentation to make. In the Canadian Criminal Code from the very beginning there has been an attempt, which I think upon the

whole has been quite successful, to state the law in language which is perhaps more plain and clear than that in which some other laws are stated, and therefore, more easily understood even by lay readers. I therefore do not think that there is really any purpose of my taking up the time of the committee to make a full dress statement upon these sections, because I think that most of them are reasonably self explanatory. At this juncture it seems to me that the important thing is that to which I was referring a few moments ago, that is to get the people who are in charge of the administration of justice to explain to us how these laws that as I say are reasonably self explanatory really work in practice. That I think is the important thing.

Now, as far as these Criminal Code sections which appear before us in this multigraphed form are concerned I believe that the majority of the members of the committee will understand these sections quite well by reading them through. Therefore, I would agree that the suggestion made by Mr. Fulton a little while ago that we go through these clauses clause-by-clause should be adopted. If any of you have any difficulties in connection with any of the clauses we shall try to explain what they mean. Now, should we have some person read them out loud?

The PRESIDING CHAIRMAN: Would you prefer that?

Mr. SHAW: Why not do it the same as in the House. Call the section and subsection and wait a moment or so for questions?

Mr. ASELTINE: I do not think that they need as much explanation as all that. They are quite simple to me.

The PRESIDING CHAIRMAN: We are not all lawyers on the committee, senator.

Hon. Mr. GARSON: Shall we call the section and if any person has any question to ask we will clear that up and go on with the next one.

The PRESIDING CHAIRMAN: Shall we begin with section 74. Shall I read the clause?

Mr. SHAW: I think we should just call it as they do in the House.

The PRESIDING CHAIRMAN: Section 74.

The Hon. Mr. GARSON: May I offer this comment. These are clauses which we are not considering in themselves; they are merely the offences for which capital punishment is imposed and their relevancy and significance to our enquiry is as offences for which capital punishment shall be imposed. Therefore, we are not concerned with treason and these other offences as such, but just as offences the penalty for which is capital punishment.

The PRESIDING CHAIRMAN: Section 74, subsection 1?

Agreed.

Subsection 2?

Agreed.

Hon. Mr. GARSON: Mr. Chairman, there has been an oversight in the compilation of this memorandum one of the offences for which capital punishment is the penalty, has been left out. That is section 77 of the Code which I shall now read it into the record:

77. Every subject or citizen of any foreign state or country at peace with His Majesty, who

- (a) is or continues in arms against His Majesty within Canada; or
- (b) commits any act of hostility therein; or
- (c) enters Canada with intent to levy war against His Majesty, or to commit any dictable offence therein for which any person would, in Canada, be liable to suffer death; and

every subject of His Majesty who

- (a) within Canada levies war against His Majesty in Company with any of the subjects or citizens of any foreign state or country at peace with His Majesty; or
- (b) enters Canada in company with any such subjects or citizens with intent to levy war against His Majesty, or to commit any such offence therein; or
- (c) with intent to aid and assist, joins himself to any person who has entered Canada with intent to levy war against His Majesty, or to commit any such offence in Canada;

is guilty of an indictable offence and liable to suffer death.

Hon. Mr. FARRIS: That is not labelled treason.

The PRESIDING CHAIRMAN: That was section 77?

Hon. Mr. GARSON: That is right.

The PRESIDING CHAIRMAN: Section 137.

Agreed.

Section 139.

Agreed.

Section 259.

Agreed.

Section 260.

Agreed.

Section 261.

Mr. WINCH: On section 261 would you explain to me who has the authority to reduce the charge from homicide to manslaughter? Is that in the hands of the jury or the judge, or who gives the direction on that?

Hon. Mr. GARSON: The first one who would have a discretion in the matter would be the Crown Attorney who on the facts of the case that came before him—

Hon. Mr. ASELTINE: —Would prepare the indictment?

Hon. Mr. GARSON: Yes. He decides what counts he will put in the indictment, and if he thinks that he cannot prove a charge of murder he may charge manslaughter. Once it goes to trial, of course, the jury are the final judges.

Mr. WINCH: If a person is charged with murder by the prosecution, does a jury have the right of saying it is not murder but is manslaughter?

Hon. Mr. GARSON: Yes. There is another section which we will come to which specifically provides for that.

The PRESIDING CHAIRMAN: Section 261.

Agreed.

Section 263.

Mr. FULTON: I would like to ask a question on that. I do not recall clearly the provisions of the law on the section. Can the minister tell us whether a judge on a charge of murder has the right to direct the jury they can find manslaughter, or can he only cover that in his charge to the jury in explaining the law? I do not recall whether the judge can say "you may not find murder. I direct you to find manslaughter."

Hon. Mr. GARSON: In view of the fact that we are going to have here a judge who has had long experience both in trial court and in the court of appeal, I think it is better to reserve that question for him, because if I agree with him it will not add anything to the authority with which he speaks and if I disagree it makes for confusion.

The PRESIDING CHAIRMAN: Section 263.

Agreed.

Section 298.

Agreed.

Section 299.

Agreed.

Section 951.

Hon. Mr. GARSON: Now, this is the point which Mr. Winch was raising a moment ago:

On a count charging murder,

if the evidence proves manslaughter or infanticide but does not prove murder, the jury may find the accused not guilty of murder but guilty of manslaughter or infanticide, but shall not on that count find the accused guilty of any other offence.

The PRESIDING CHAIRMAN: Section 951.

Agreed.

Section 952.

Agreed.

Section 1008.

Agreed.

Section 1022.

Agreed.

Section 1061.

Mr. FULTON: For what purposes is this being dropped from the bill?

Hon. Mr. GARSON: It is provided for in another portion of the Code dealing with capital punishment.

The PRESIDING CHAIRMAN: Section 1061.

Agreed.

Mr. WINCH: May I ask a question on section 1022?

The PRESIDING CHAIRMAN: Yes.

Mr. WINCH: The right of leniency. Does that just apply in the Crown in the right of Canada, or does it actually mean if turned down by a body responsible for government in Canada or justice he can go to Her Majesty herself on that appeal?

Hon. Mr. GARSON: No.

Mr. WINCH: It is in the right of Canada?

Hon. Mr. GARSON: Yes. It is a constitutional prerogative of mercy. It is the Queen of Canada as represented by Her Majesty's Viceroy in Canada, who in turn is advised by Her Majesty's ministers in Canada.

Mr. WINCH: No right of personal clemency?

Hon. Mr. GARSON: Not under this legislation.

The PRESIDING CHAIRMAN: Section 1062.

Agreed.

Section 1063.

Mr. DUPUIS: On section 1063 why should there not be a specified time between the sentence and hanging? Why not specify the minimum time that can be fixed?

Hon. Mr. GARSON: One of the most important reasons for that is every accused who has been convicted has the right to appeal his conviction to the appeal court of his own province and the time within which he can make appeal would depend upon the rules of procedure of the courts of that province. It ranges from 15 days in certain provinces to 30 days in others. Then when the case goes before the court of appeal it has to be set down for the next sittings of the appeal court. This time also varies from one province to another depending upon a number of factors. In some it takes longer to get the appeal heard than in others. Again in a difficult case the appeal judge may want to reserve judgment for some time. If the appeal is rejected, but there is one member of the provincial court of appeal who dissents, then the accused can appeal to the Supreme Court of Canada. But he has to apply for leave to appeal which takes time. The appeal, if granted, has to be set down for hearing at the next sittings of the Supreme Court of Canada. So, within certain limits there is no way of prophesying when a criminal appeal is first launched, how long it is going to be before the final appeal taken by the accused to the Supreme Court of Canada will be disposed of. Meanwhile we in the Department of Justice cannot consider the commutation of sentence. For amongst the other material which we consider, are the judgments of the court of appeal in the province or the Supreme Court of Canada, and we cannot consider these judgments until they have been delivered. So we could not very well legislate for a fixed period of time between the sentence and the hanging as Mr. Dupuis suggests. The time taken to dispose of these appeals depends a great deal upon the circumstances.

Mr. DUPUIS: My intention is not to shorten the time between the sentence and the time of hanging. I thought we could fix a certain time, say 3 months, that would give sufficient time to one who has been condemned to go to appeal and follow the legal procedures he may have to follow. But the fact that the time may be too short between the date of sentence and hanging may mean probably more legal costs added to the condemned person because of not giving enough time between the date of the sentence and the time of the hanging. I would say that 3 months would be a minimum.

The PRESIDING CHAIRMAN: May I suggest that you might like to speak on this matter when it comes up in the House of Commons. We have not reached that section in the discussions in the committee in the House of Commons. Probably you would like to discuss it there. I am just wondering if this is the place now to discuss it.

Mr. FULTON: May I ask if the minister, or Mr. MacLeod, could give us an explanation of the relationship between sections 1022, 1063 and 1077? I am frank to confess that I am not clear myself on the law with regard to the exercise of the prerogative of leniency as related to the crime or commutation of sentence. Those three sections are related to those two subjects and I wonder whether the minister or Mr. MacLeod could say just how that works.

Hon. Mr. GARSON: I would be glad to do that, but first may I make a comment in relation to the question asked by Mr. Dupuis. The time for execution is fixed, but if appeal proceedings are taken there is power given to the court to grant a reprieve extending the time of the carrying out of the sentence so as to enable the appeal proceedings to be completed. That is the way in which that difficulty is overcome.

Mr. FULTON: Is the authority vested in the minister, exercised through the remission branch, the same authority as exercised in recommending the use of the prerogative of mercy?

Hon. Mr. GARSON: Yes.

Mr. FULTON: Will you give us a word on these sections, 1022, 1063 and 1077?

Hon. Mr. GARSON: Do you wish comment on section 1022?

Mr. FULTON: Section 1022 deals with the prerogative of leniency and also empowers the Minister of Justice to take certain action with respect to directing new trials, etc., and it appears in that section under the prerogative of mercy. Section 1063 provides for the report by the judge before whom such prisoner has been convicted to the Secretary of State, for the information of the Governor General.

Hon. Mr. HAYDEN: That is limited to an offence carrying the punishment of death.

Mr. FULTON: I am thinking of this in relation to capital punishment only. Section 1077 gives the Crown the right to commute the sentence of death.

Hon. Mr. GARSON: Perhaps I could link those three clauses together in this way. Section 1022, subsection (1), states that:

Nothing in the ten last preceding sections of this Act shall in any manner limit or affect His Majesty's royal prerogative of mercy.

My hon. friend is aware that the royal prerogative is a prerogative outside of the legislation altogether, and this Section 1022 (1) simply clears up beyond any peradventure the question of whether these "last ten preceding sections have" the effect of limiting the prerogative, by providing that they do not limit it. Subsection 2 of section 1022 says—and here I think I should make it clear that this section deals not only with capital cases, where the accused has been sentenced to be hanged, but it deals with all other cases as well—the following:

Upon any application for the mercy of the Crown on behalf of any person convicted on indictment.

When the Minister of Justice is considering whether the royal prerogative of mercy should be exercised in relation to that accused, he may in that consideration be inclined to think that it is not only mercy that the accused needs but that he has not had a fair trial. Then instead of saying, "I will let the stain of the guilt remain upon you but I will let you off from the punishment for the guilt"—the Minister of Justice—"if he entertains a doubt whether such persons ought to have been convicted", may, "after such inquiry as he thinks proper"—his suspicions may be aroused that the accused has not had a fair trial, and he makes some inquiries in various directions and they tend to confirm that the accused has not had a fair trial—then he may, instead of advising Her Majesty to remit or to commute the sentence, direct by an order in writing a new trial at such time and before such court as the Minister of Justice thinks proper. In effect he says, "Try this man over again."

Mr. LUSBY: Has that ever been done?

Hon. Mr. GARSON: I did that within the last year. The man was tried over again, and again convicted, and I think the case was successfully appealed if I remember rightly. That was the case of an accused Cachia, represented by Arthur Martin, Q.C.

Hon. Mr. HAYDEN: There was another case, the Jarvis case, because I was in the court of appeal.

Hon. Mrs. HODGES: Would it not be a little clearer to the lay mind if some of these clauses were a little closer together? You have to go from one to the other in different parts of the Act to relate one to the other, and I wonder if it would be possible for these to be a little closer together.

Hon. Mr. GARSON: As a matter of fact, the grouping is based upon a relationship, and the authors of the Code, of the old Code and the new Code as well, have tried to group clauses together because of that relationship which

they thought was the most significant. Now, clauses may have different kinds of relationships to one another, and it may be that a clause that is put near some other in the Code because of one relationship also has another relationship to another clause. The draftsman cannot recognize both of these relationships. He has to choose that relationship which he thinks is the most significant and put those clauses together which are in that most significant relationship. It is a matter of relationship and the draftsman has to make a choice of what he thinks is the most significant relationship.

Hon. Mr. FARRIS: Maybe you could make a cross reference.

Hon. Mrs. HODGES: I was speaking solely from the point of view of the lay mind. It complicates it when you read something in one part and then you read something in another part which, to the lay mind, seems to conflict with the previous one.

Hon. Mr. GARSON: That is true, but I think when you go over the two or three pages and you find the other clause which appears to be related to your first clause, you will find that that second clause has an even closer relationship to those clauses which are in juxtaposition to it.

Hon. Mrs. HODGES: Cross reference would make it easier.

Hon. Mr. GARSON: Yes, that is the best solution, I think. Going back to Mr. Fulton's question again: Then the Minister of Justice, in addition to directing a new trial, may find when he examines this difficulty that there is a point of law involved that has not been disposed of to his satisfaction, and he may, under section 1022, subsection 2 (b),

at any time, refer the whole case to the court of appeal, and the case shall then be heard and determined by that court as in the case of an appeal by a person convicted;

In other words, in sending back to be retried, he sends it to the court of appeal to have this legal point decided.

Then if he desires assistance of the court of appeal on any point arising in the case with a view to the determination of the petition for mercy, he may under section 1022 (2) (b) "refer that point to the court of appeal for its opinion thereon, and that court shall consider the point so referred and furnish the Minister of Justice its opinion thereon accordingly". That disposes of Section 1022.

Section 1063 reads:

In the case of any prisoner sentenced to the punishment of death, the judge before whom such prisoner has been convicted shall forthwith make a report of the case to the Secretary of State, for the information of the Governor General; and the day to be appointed for carrying the sentence into execution shall be such as, in the opinion of the judge, will allow sufficient time for the signification of the Governor's pleasure before such day.

This also deals with the point Mr. Dupuis raised, that the date set for the execution shall be such date as to give the Governor General an opportunity of considering the commutation of the death sentence after all the material has been placed in his hands and considering it adequately before the date of the carrying out of that sentence.

Mr. FULTON: May I ask a question there for clarification? This is the point I am not quite clear on. Under section 1022, I gather that an appeal is made to the minister for the exercise of the royal prerogative of clemency. Under section 1063, the judge makes a report to the Secretary of State for transmission to the Governor General for the signification of His Excellency's pleasure. Does the Governor General automatically refer that back to the Minister of Justice?

Hon. Mr. GARSON: No, this is the Governor General of Canada who is the Viceroy of the Queen of Canada who is a constitutional monarch. The judge's report goes from the Secretary of State to the Queen's minister, who is in this case the Minister of Justice. So it does in actual practice—you may correct me on this, but I think that the statute requires it—go from the judge to the Secretary of State to the Minister of Justice. They usually send it to me direct.

Mr. FULTON: It may come in two ways: it may be instituted by an appeal on behalf of the convicted person, or by the report of the judge which is intended to go to His Excellency but will also find its way back to the Minister of Justice? Even if the accused does not appeal for clemency in the case of every death sentence, the matter automatically comes before the Minister of Justice because the judge makes the report which eventually finds its way into your hands?

Hon. Mr. GARSON: Yes, the judge is required by statute—and this is the statute, section 1063 of the Code—to make this report to the Secretary of State and the Minister of Justice.

Mr. FULTON: Excuse me. Just to be accurate—as I read the statute, he has only to make it to the Secretary of State for transmission to the Governor General, but I understand from you that the practice is that before it comes back to the Governor General it comes to you, that is his Minister of Justice, and it comes to the Secretary of State as well?

Hon. Mr. GARSON: The judge makes it to me because time is important in those cases.

Mr. FULTON: Perhaps we should change the wording when we come to the details of this.

Hon. Mr. GARSON: There would be no harm in that.

Mr. FAIREY: The point is that whether there is an appeal or not, the evidence is reviewed?

Hon. Mr. GARSON: There has been a long settled practice in this country that, no matter how friendless and how terrible a rogue a man may be, even if he has no other human being to speak for him at all, his case comes before the whole cabinet and is reviewed in detail just as if he has a host of friends.

Mr. FULTON: By virtue of section 1063?

Hon. Mr. GARSON: Not entirely by virtue of section 1063. It is a long settled practice. Another thing you will not find in the Code is the fact that at the cabinet meeting in which this question of commutation is considered the first item on the agenda is this capital case, no matter how urgent are the other matters on that agenda the capital case takes priority above anything else.

Mr. FULTON: Does the judge make a report to the cabinet?

Hon. Mr. GARSON: Yes. I am afraid we are covering ground we intended to cover later. Perhaps I can go over it later in a more orderly fashion. We get a report from the judge in which he reviews the whole course of the case and advises us, amongst other things, as to whether the jury has made a recommendation for mercy and gives his own comments on that recommendation, if any, or in many cases his own recommendation, his own views about mercy. We have all the depositions, the complete case, all the evidence that has been given at the trial and all the judge's charge to the jury, in many cases a case within a case, a voir dire, or anything of that sort having to do with the admission of confessions and other evidence. We have a complete report from the police and we have a report from the warden of the jail in which the man has been incarcerated pending the carrying out of the sentence. Furthermore in any case where there is any doubt as to the man's sanity we have reports of

psychiatrists whom we retain for that purpose to advise us as to whether he is insane, not when he committed the crime, which would be a defence, not when he was standing trial—and if he is not sane then he cannot instruct counsel and cannot be tried—but whether he is insane at the time that the execution is going to be carried out. If he is insane then he cannot be executed, that has been the fixed policy. With this material that we have before us, the case is first analyzed by officials in the Remission Service of the Department of Justice and a long precis is made analyzing the complete evidence in the trial from beginning to end and making a recommendation as to commutation to their minister. This precis itself is usually quite a sizeable document. Then the Minister of Justice or it is now, the Solicitor General, goes through all this material and on the basis of this material he makes his own recommendation to his colleagues in a meeting of the full cabinet and after a discussion of the relevant points a cabinet decision is made as to whether the sentence should be carried out. This section 1063, to which my hon. friend, Mr. Fulton, refers, provides for one of the most important items considered in remission cases, namely the report of the judge who presided at the trial.

Mr. FULTON: We are perfectly clear that that procedure goes on whether the accused has himself appealed for clemency or not?

Hon. Mr. GARSON: There is the odd case where the prisoner says, "I don't want any commutation. I prefer you didn't grant it to me", but we consider commutation in every case. Not only that; he gets the same consideration whether he applies or does not apply, whether he has no friends or whether he has friends.

Mr. FULTON: That is the part I wanted to know about.

Mr. SHAW: I assume that would be in all cases?

Hon. Mr. GARSON: Without exception.

Mr. SHAW: I hope the minister realizes he and his department were severely criticized because of a case involving a 17-year-old boy. If the newspapers had known of this procedure, they would not have been so critical. They expected the sentence to be commuted almost the next day because of the boy's youth.

Hon. Mr. GARSON: Certainly in that case, for example, we were able to dispose of the criticism. They criticized us in advance of any delay. The editorial was so critical that I undertook to write a letter to the editor, which was published, and he wrote an explanatory editorial in relation to my letter. I had taken the position in my letter to him that in a great majority of cases the reason why the accused had to be kept in suspense—that was the charge, that we had kept accused waiting until the very last day before they were to be hanged and that this was worse torture than the hanging itself—was because of the delays caused by the hearing of the accused's appeal.

The PRESIDING CHAIRMAN: Of course, if that delay had caused him to go crazy, he would not have been hanged.

Hon. Mr. GARSON: That is right. But in that particular case the boy was 17 years of age. Since the case against him was pretty conclusive his counsel did not appeal. Because he did not appeal we were able, not having to encounter the delays that are involved in the appeal, to promptly dispose of this case. This met the criticism very conclusively. But I remember writing to the editor at that time that in 11 out of 12 capital cases in a preceding period before my writing that letter there had been an appeal; and, of course, we could not go on with the consideration of the question of commutation until after the appeal court had disposed of the appeal before it. For if the appeal court were to quash the verdict then it would not be a question as to whether the penalty was to be commuted. His guilt itself would be wiped out or at

least he would have to be tried all over again. It would be monstrous for us, while his innocence was in the balance before the appeal court, to consider, on the assumption that he was guilty, the commutation of his death penalty.

Mr. FULTON: So that in every case you must wait until the time for appeal has expired before you take it up?

Hon. Mr. GARSON: Yes. I think I should add that in addition to the judge's report, all the evidence, the police report and the warden's report, we also have the reasons for judgment of the court of appeal or the Supreme Court of Canada in those cases in which appeal has been taken. Sometimes a point will be made in the argument on appeal by some more acute mind, a counsel or the judges themselves, that will shed quite a new light upon the question of commutation itself.

The PRESIDING CHAIRMAN: Section 1063.

Mr. FULTON: Section 1077. Do you wish to wait?

Hon. Mr. GARSON: That simply provides for the commutation.

Mr. FULTON: May I ask a couple of questions then. Are you in a position to tell us what set of principles has grown up over the years in the course of deliberations you have outlined which govern you in arriving at your decision whether to remit or commute in a capital case?

Mrs. SHIPLEY: Are not all these questions the business of the next meeting when the minister is going to carry on after we have heard from the Attorney General or his appointee?

Hon. Mr. GARSON: I think Mrs. Shipley's point is very well taken. I do not mind in response to these questions to put some of the cart before the horse, but not the whole cart. I think we will get a more orderly impression of the way in which the law operates if we start at the beginning and trace a typical case through the courts to the point where the Department of Justice is considering the question of commutation, and then we can follow up, with, as I said before, an orderly statement of these principles upon which commutation is granted. This really cannot be brought out quite as satisfactorily by the question and answer method which we have been using today.

Mr. FULTON: That is a very admirable way of dealing with it. I may have missed the discussion, but I did not see it in the steering committee's report. If that is going to be our method of proceeding, then that is alright. But, I would like to see it cleared up.

The PRESIDING CHAIRMAN: Section 1063.

Carried.

Section 1064.

Agreed.

Section 1065.

Agreed.

Section 1066.

Agreed.

Section 1067.

Agreed.

Section 1068.

Agreed.

Section 1069.

Agreed.

Section 1070.

Agreed.

Section 1071.

Agreed.

Section 1072.

Agreed.

Section 1073.

Agreed.

Section 1074.

Agreed.

Section 1075.

Agreed.

Section 1077.

Agreed.

That is all we have.

Now, we go into corporal punishment.

Section 80.

Agreed.

Section 204.

Agreed.

Section 206.

Agreed.

Section 276.

Agreed.

Section 292.

Hon. Mrs. HODGES: May I ask a question there? I have a point to bring up in connection with an indecent assault case. Is now the time to bring it up?

The question I wish to bring up is in regard to this:

Every one is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped, who indecently assaults any female.

We had a case in Victoria in January where Magistrate H. C. Hall has drawn pointed attention to the limitations imposed on his court in passing sentence in cases of indecent assault. His words, doubtless echo the thoughts of most decent people:

I feel the maximum I am able to impose is really too small for the offence to which you each pleaded guilty. I intend to impose the maximum—six months less six days.

Now, that seems to run counter to this particular clause and I just would like to know about that.

The PRESIDING CHAIRMAN: Is it a charge under this section?

Hon. Mrs. HODGES: That I do not know. It was a case of indecent assault on a female.

Hon. Mr. GARSON: It is rather hard to express an opinion on a matter without knowing all the facts. I would suspect that the difficulty was not that the offence did not contain a sentence of more than six months, but the fact that the trial magistrate may have had a limited jurisdiction.

Hon. Mrs. HODGES: He is a police magistrate in the city of Victoria and this was a case which aroused a great deal of public opinion, the statement that the maximum is six months less six days. The point is we are discussing the Criminal Code and it seems so contrary to what is set out in the Criminal Code.

The PRESIDING CHAIRMAN: Could you obtain the information as to the section under which the charge is laid?

Hon. Mrs. HODGES: I could, but those are the magistrate's own words.

Hon. Mr. GARSON: This section is pretty clear.

Hon. Mrs. HODGES: It does not say you must not do it here or that it is for some one else. It specifically says anyone who assaults any female. I wanted to find out about this.

Hon. Mr. GARSON: The prosecutor may have exercised discretion there to lay the charge under another section.

Hon. Mr. ASELTINE: It may have been under a summary conviction.

Hon. Mr. GARSON: Maybe that is why the person pleaded guilty.

Hon. Mrs. HODGES: To a layman it is not understood.

Hon. Mr. GARSON: Sometimes there is an advantage in pleading guilty to the right offence—

Hon. Mrs. HODGES: The man did not plead guilty as a matter of fact.

Mr. FAIREY: In such a case would the magistrate have authority to direct that the charge be laid under a more exacting section?

Hon. Mrs. HODGES: Is there another section in which indecent assault can be charged?

Mr. FULTON: The magistrate can reduce the charge, but I do not think he can increase it.

Hon. Mrs. HODGES: As I say, I am quoting the magistrate's own words. I am sorry if I am out of order.

The PRESIDING CHAIRMAN: You are not out of order, as long as the reporter can get what is said, but when there are two or three people speaking at the same time the reporter cannot get the evidence.

Hon. Mrs. HODGES: Some one had made an interjection here and I was saying that I was quoting the magistrate's own words, not any outside commentator. The magistrate was highly indignant because as he says the maximum is six months less six days which is contrary to what we have here.

Mr. FAIREY: I was just asking the question: in such a case where a magistrate expresses indignation at his inability to impose what he considers an adequate penalty could he direct that the charge be relaid under a different section of the Criminal Code?

Mr. WINCH: We are not discussing sentences of the Criminal Code. We are discussing corporal punishment. The other matter is for the Criminal Code itself.

Hon. Mrs. HODGES: We all have not had the same opportunity that the members of the other house have had of bringing these matters to the attention of the house.

Hon. Mr. HAYDEN: The bill has been through our house twice and will be back again.

Hon. Mrs. HODGES: I wanted to make sure that somewhere I got this in.

The PRESIDING CHAIRMAN: Section 276.

Carried.

Section 292.

Agreed.

Section 293.

Agreed.

Section 299.

Agreed.

Section 300.

Agreed.

Section 301.

Agreed.

Section 302.

Agreed.

Section 447.

Agreed.

Section 457.

Agreed.

Section 1060.

Mr. WINCH: I notice in this that corporal punishment has to be administered in the presence of a medical officer. Now, suppose that the medical officer says that the man is not in condition to be whipped, has the medical officer authority to say it shall not be inflicted although the judgment of the court was that there was to be corporal punishment?

Hon. Mr. GARSON: I think that he certainly would. The Act directs that it be done under his supervision and if anything happened to the accused as a result of its being done when in the opinion of the medical officer the man was not in a fit condition to receive it—

Mr. WINCH: The reason I asked that is, I see in one section it states: "It shall be carried out not later than ten days before the expiration of any term of imprisonment to which the offender is sentenced for the offence." But I cannot see any authority whereby it could not be carried out.

Hon. Mr. GARSON: I think they would not carry it out; but if they were concerned about remission, they could make an application to the remissions branch of the Department of Justice which has the power to remit.

Mr. FULTON: Could I ask, before 1060 is carried, if there is going to be any opportunity, and if so what is the best way, of getting an analysis of the number of cases in which corporal punishment has been imposed as part of the sentence and the type of cases? Is that too difficult a statistic to obtain?

Hon. Mr. GARSON: I would not think so, so far as the penitentiary system is concerned. I could not speak for the provincial jails. But I would think we would have a record of it for the penitentiaries.

Mr. FULTON: Is whipping ever part of the sentence where the sentence is less than two years? Would it not always be a penitentiary sentence?

Hon. Mr. GARSON: No. Because, for these various offences, the magistrate does not have to commit for two years.

Mr. WINCH: There is another point which interests me. In going through the sections here—and this is the next one dealing with corporal punishment—I see no reference to any authority for the corporal punishment when it is not inflicted by the judge, and yet we all know for the purposes of discipline in some of the jails they inflict corporal punishment. Where do they obtain the authority for that?

Hon. Mr. GARSON: They would get the authority under the relevant legislation which sets up the jail administration and more than likely in the regulations passed under that statutory authority.

Mr. WINCH: Then, in a study of corporal punishment which is one of our duties in this committee, we not only have to study the Criminal Code, but we also have to study some other statute.

Mr. FULTON: Just the Penitentiary Act.

Hon. Mr. GARSON: Yes, it would have to study corporal punishment when imposed as a disciplinary measure in the administration of penal institutions.

Hon. Mr. ASELTINE: Under the jurisdiction of the Dominion only.

Hon. Mr. GARSON: I presume so.

Hon. Mr. ASELTINE: We have no jurisdiction in this committee to investigate the provinces.

Hon. Mr. GARSON: No.

Mr. WINCH: It is used in penitentiaries as well as in provincial jails.

Mr. DUPUIS: I want to know if the jails fall under the Penitentiary Act?

Hon. Mr. GARSON: Yes, they come under the Prisons and Reformatories Act, and appropriate provincial legislation.

Mr. DUPUIS: In other words, then they make regulations to be put in force in the jails which would not be allowed in the penitentiaries? You can whip a person under the Penitentiary Act in the penitentiary and maybe they would not be allowed to impose the same treatment in a provincial jail under the Penitentiary Act.

Hon. Mr. GARSON: I do not think that it would work quite that way. The Prisons and Reformatories Act of the Federal Parliament is the statutory authority under which the provincial jails—not federal penitentiaries—are operating, and if you examine the Prisons and Reformatories Act, you will see it is divided into different parts. One part covers the province of Alberta, and Nova Scotia and New Brunswick, and so on. The authority would be there. I think, if we wanted,—I would have to give careful consideration to this question—we probably could build up a case of technical authority over them. But I imagine there would be little purpose in our doing so; for on the question of whether we should have corporal punishment I think we could get all of the material that we needed in our federal institutions themselves.

Hon. Mrs. FERGUSON: May I ask the minister what cat-o'-nine tails is, as mentioned in subsection 2 of section 1060?

Hon. Mr. GARSON: I will have Mr. MacLeod answer that.

Mr. MACLEOD: The one I have seen consists of a piece of wood about the size of a broom handle and about 12 or 15 inches long to which are attached nine thongs of cord-like material about 15 to 20 inches long. That is about what it is.

Hon. Mrs. FERGUSON: Is it not true that in different jails they are entirely different, and therefore the punishment that might be inflicted in one part of Canada when you are sentenced to whipping might be entirely different to what you suffer in another part of Canada because they used an instrument which inflicted much less pain?

Mr. MACLEOD: I think it has been noted that there are variations between the various implements used.

Hon. Mr. ASELTINE: There is nothing in the Code to fix the weapon?

Mr. MACLEOD: No. There may be minor differences in form of some of them, but it is the same principle.

Hon. Mrs. FERGUSON: There is a difference.

Mr. FULTON: We could ask the provincial attorneys general to cover that in their evidence and also ask them to let us know in how many cases in their provinces in the last five years corporal punishment has been imposed as part of the sentence.

Hon. Mr. HAYDEN: And we might mention the question of standardizing the instrument.

The PRESIDING CHAIRMAN: I see that whipping shall not be inflicted upon females. The suggestion has been brought to my attention that we substitute the whipping for spanking.

Hon. Mr. GARSON: No. Substitute spanking for whipping.

The PRESIDING CHAIRMAN: That we institute the penalty. Spanking would be defined as a form of whipping.

Mr. LUSBY: Mr. Chairman, does the reference to the committee cover corporal punishment other than as inflicted under the provisions of the Criminal Code? You are speaking of corporal punishment as a disciplinary measure in jails and penitentiaries and I was wondering if that comes within the scope of the reference to the committee?

The PRESIDING CHAIRMAN: No. We are to deal with corporal punishment, capital punishment, and make recommendations, but not, I do not think, to amend. The terms of reference are:

That a joint committee of both houses of parliament be appointed to inquire into and report upon the questions whether the criminal law of Canada relating to (a) capital punishment, (b) corporal punishment or (c) lotteries should be amended in any respect and, if so, in what manner and to what extent.

Mr. LUSBY: The criminal law should be amended?

The PRESIDING CHAIRMAN: Yes.

Mr. WINCH: Does that mean we could go into the question of corporal punishment as used in jails?

The PRESIDING CHAIRMAN: We are not here to amend the law but to make recommendations "whether the criminal law of Canada should be amended in any respect . . ."

Hon. Mr. ASELTINE: It is clearly confined to the criminal law?

Hon. Mr. GARSON: Yes.

The PRESIDING CHAIRMAN: Lotteries. Section 226.

Agreed.

Section 228.

Agreed.

Section 229.

Agreed.

Section 230.

Agreed.

Section 236.

Agreed.

Section 641.

Agreed.

Section 642.

Agreed.

Now, gentlemen, it is a quarter to one.

Mr. DUPUIS: I suppose any member of this committee would have the privilege of putting in a brief himself like any stranger would on these three different matters?

The PRESIDING CHAIRMAN: I would suggest if you have a brief we would be very pleased to consider it in the sub-committee on agenda and procedure, and it will be received and dealt with in the same manner as any other.

Now, before going into camera probably we could agree on the adoption of the committee's report.

I was going to suggest that we have this agreed to, subject to the appointment of counsel, but I am told now that we can have it passed in camera, so that will not be necessary.

Mr. FULTON: Mr. Chairman, is it desirable to do that? The question I raise is: Although I am not going to object to having some part of our discussion in camera, I wonder if it is desirable that the formal decision on the report itself should be in camera. It would not take too long to come back into public session from camera and then adopt the report. I question the propriety of adopting the report *in camera*.

The PRESIDING CHAIRMAN: That was the suggestion I was making originally. I was thinking that we should come back into formal committee for the adoption of the report, but I am told it is not necessary.

Mr. FULTON: I think it would be preferable.

The PRESIDING CHAIRMAN: Whatever the committee agrees upon.

Hon. Mr. ASELTINE: We can decide that later.

The PRESIDING CHAIRMAN: The committee will now stand adjourned. We will go *in camera*.

Mr. FULTON: To keep the record straight, the committee has not adjourned. The public phase of the meeting will be adjourned.

The PRESIDING CHAIRMAN: We are now going *in camera*.

The committee continued *in camera*.

The committee resumed.

The PRESIDING CHAIRMAN: It has been moved by Mrs. Shipley and seconded by Mr. Lusby that the report of the subcommittee to the committee be adopted as amended.

Carried.

Mr. FULTON: Carried on division.

The PRESIDING CHAIRMAN: Any further discussion today? There will be a subcommittee meeting on agenda proceedings tomorrow afternoon. You have not received your notices yet, but I will give you warning.

Hon. Mr. GARSON: I understand that you would prefer to have the judge at the next meeting.

The PRESIDING CHAIRMAN: Next Tuesday.

Hon. Mr. GARSON: And that would be satisfactory?

The PRESIDING CHAIRMAN: Yes, but we should have another meeting.

Hon. Mr. ASELTINE: That will be the 9th. This says "the 10th".

The PRESIDING CHAIRMAN: We have to determine that. It will be either the 9th or the 10th, whichever is convenient. I think it was amended to that extent. It is up to us to get the witnesses on whatever date is convenient. Would it be possible to have another meeting with the minister some day this week? Probably we can get some other witness for later this week. Would it be agreeable to the committee that we sit Thursday afternoon?

Hon. Mr. GARSON: What about the Christian Social Council? They are Toronto people and perhaps they could come this Wednesday or Thursday.

The PRESIDING CHAIRMAN: If you will give the chairman the authority, we will try to get a witness for you on Thursday of this week, and in the meantime I am warning the subcommittee on agenda procedure that there will be a meeting tomorrow afternoon.

Mr. FULTON: After the orders of the day?

The PRESIDING CHAIRMAN: About four o'clock. We will advise you as to the time and place whenever that has been agreed upon. The meeting is adjourned.

The committee adjourned.

APPENDIX

PROVISIONS OF THE PRESENT CRIMINAL CODE RELATING TO CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

A. CAPITAL PUNISHMENT

The following are the provisions of the present Criminal Code relating to capital punishment:

Sec. 74. (Bill clause 46)

"1. Treason is

- (a) the act of killing His Majesty, or doing him any bodily harm tending to death or destruction, maim or wounding, and the act of imprisoning or restraining him; or
- (b) the forming and manifesting by any overt act an intention to kill His Majesty, or to do him any bodily harm tending to death or destruction, maim or wounding, or to imprison or to restrain him; or
- (c) the act of killing the eldest son and heir apparent of His Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or
- (d) the forming and manifesting, by an overt act, an intention to kill the eldest son and heir apparent of His Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or
- (e) conspiring with any person to kill His Majesty, or to do him any bodily harm tending to death or destruction, maim or wounding, or conspiring with any person to imprison or restrain him; or
- (f) levying war against His Majesty either
 - (i) with intent to depose His Majesty from the style, honour and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland or of any other of His Majesty's dominions or countries, or
 - (ii) in order, by force or constraint, to compel His Majesty to change his measures or counsels, or in order to intimidate or overawe both Houses or either House of Parliament of the United Kingdom or of Canada; or
- (g) conspiring to levy war against His Majesty with any such intent or for any such purpose as aforesaid; or
- (h) instigating any foreigner with force to invade the said United Kingdom or Canada or any other of the dominions of His Majesty; or
- (i) assisting, while in or out of Canada, any enemy at war with Canada, or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are; or
- (j) violating, whether with her consent or not, a Queen consort, or the wife of the eldest son and heir apparent, for the time being, of the King or Queen regnant.

2. Every one who commits treason is guilty of an indictable offence and liable to suffer death."

Sec. 77. (Bill clause 46)

"Every subject or citizen of any foreign state or country at peace with His Majesty, who

- (a) is or continues in arms against His Majesty within Canada; or
- (b) commits any act of hostility therein; or
- (c) enters Canada with intent to levy war against His Majesty, or to commit any indictable offence therein for which any person would, in Canada, be liable to suffer death; and

every subject of His Majesty who

- (a) within Canada levies war against His Majesty in company with any of the subjects or citizens of any foreign state or country at peace with His Majesty; or
- (b) enters Canada in company with any such subjects or citizens with intent to levy war against His Majesty, or to commit any such offence therein; or
- (c) with intent to aid and assist, joins himself to any person who has entered Canada with intent to levy war against His Majesty, or to commit any such offence in Canada;

is guilty of an indictable offence and liable to suffer death."

Sec. 137. (Bill clause 75)

"Every one is guilty of an indictable offence who does any act which amounts to piracy by the law of nations, and is liable

- (a) to the penalty of death, if in committing or attempting to commit such crime the offender murders, attempts to murder or wounds any person, or does any act by which the life of any person is likely to be endangered;
- (b) to imprisonment for life in all other cases."

Sec. 139. (Bill clause 75)

"Every one is guilty of an indictable offence and liable to suffer death who, in committing or attempting to commit any piratical act, assaults with intent to murder, or wounds, any person, or does any act likely to endanger the life of any person."

Sec. 259. (Bill clause 201)

"Culpable homicide is murder,

- (a) if the offender means to cause the death of the person killed;
- (b) if the offender means to cause to the person killed any bodily injury which is known to the offender to be likely to cause death, and is reckless whether death ensues or not;
- (c) if the offender means to cause death, or, being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, though he does not mean to hurt the person killed;
- (d) if the offender, for any unlawful object, does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting any one."

Sec. 260. (Bill clause 202)

"In case of treason and the other offences against the King's authority and person mentioned in Part II, piracy and offences deemed to be piracy, escape or rescue from prison or lawful custody, resisting lawful apprehension,

murder, rape, indecent assault, forcible abduction, robbery, burglary or arson, culpable homicide is also murder, whether the offender means or not death to ensue, or knows or not that death is likely to ensue,

- (a) if he means to inflict grievous bodily injury for the purpose of facilitating the commission of any of the offences in this section mentioned, or the flight of the offender upon the commission or attempted commission thereof, and death ensues from such injury; or
- (b) if he administers any stupefying or overpowering thing for either of the purposes aforesaid, and death ensues from the effects thereof; or
- (c) if he by any means wilfully stops the breath of any person for either of the purposes aforesaid, and death ensues from such stopping of the breath.
- (d) if he uses or has upon his person any weapon during or at the time of the commission or attempted commission by him of any of the offences in this section mentioned or the flight of the offender upon the commission or attempted commission thereof, and death ensues as a consequence of its use."

Sec. 261. (Bill clause 203)

"Culpable homicide, which would otherwise be murder, may be reduced to manslaughter if the person who causes death does so in the heat of passion caused by sudden provocation.

2. Any wrongful act or insult, of such a nature as to be sufficient to deprive an ordinary person of the power of self-control, may be provocation if the offender acts upon it on the sudden, and before there has been time for his passion to cool.

3. Whether or not any particular wrongful act or insult amounts to provocation, and whether or not the person provoked was actually deprived of the power of self-control by the provocation which he received, shall be questions of fact: Provided that no one shall be held to give provocation to another by doing that which he had a legal right to do, or by doing anything which the offender incited him to do in order to provide the offender with an excuse for killing or doing bodily harm to any person.

4. The illegality of an arrest shall not necessarily reduce an offence of culpable homicide from murder to manslaughter, but if the illegality was known to the offender it may be evidence of provocation."

Sec. 263. (Bill clause 206)

"Every one who commits murder is guilty of an indictable offence and shall, on conviction thereof, be sentenced to death."

Sec. 298. (Bill clauses 135 and 139)

"Rape is the act of a man having carnal knowledge of a woman who is not his wife without her consent, or with consent which has been extorted by threats or fear of bodily harm, or obtained by personating the woman's husband, or by false and fraudulent representations as to the nature and quality of the act.

2. No one under the age of fourteen years can commit this offence."

Sec. 299. (Bill clause 136)

"Every one who commits rape is guilty of an indictable offence and liable to suffer death or to imprisonment for life, and to be whipped."

Sec. 951 (2). (Bill clause 569)

"2. On a count charging murder, if the evidence proves manslaughter or infanticide but does not prove murder, the jury may find the accused not guilty of murder but guilty of manslaughter or infanticide, but shall not on that count find the accused guilty of any other offence."

Sec. 952. (Bill clause 569)

If any person tried for the murder of any child is acquitted thereof, the jury by whose verdict such person is acquitted may find, in case it so appears in evidence that the child had recently been born, and that such person did, by some secret disposition of such child or of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as it might have passed if such person had been convicted upon an indictment for the concealment of birth."

Sec. 1008. (Bill clause 577)

"If sentence of death is passed upon any woman she may move in arrest of execution on the ground that she is pregnant.

2. If such motion is made the court shall direct one or more registered medical practitioners to be sworn to examine the woman in some private place, either together or successively, and to inquire whether she is with child of a quick child or not.

3. If upon the report of any of them it appears to the court that she is so with child, execution shall be arrested until she is delivered of a child, or until it is no longer possible in the course of nature that she should be so delivered."

Sec. 1022. (Bill clauses 596 and 658)

"Nothing in the ten last preceding sections of this Act shall in any manner limit or affect His Majesty's royal prerogative of mercy.

2. Upon any application for the mercy of the Crown on behalf of any person convicted on indictment, the Minister of Justice,

- (a) if he entertains a doubt whether such persons ought to have been convicted, may, after such inquiry as he thinks proper, instead of advising His Majesty to remit or to commute the sentence, direct by an order in writing a new trial at such time and before such court as the Minister of Justice thinks proper; or
- (b) may, at any time, refer the whole case to the court of appeal, and the case shall then be heard and determined by that court as in the case of an appeal by a person convicted; and
- (c) at any time, if the Minister of Justice desires the assistance of the court of appeal on any point arising in the case with a view to the determination of the petition, he may refer that point to the court of appeal for its opinion thereon, and that court shall consider the point so referred and furnish the Minister of Justice its opinion thereon accordingly."

Sec. 1061. (Dropped from the Bill)

"Every one who is indicted as principal or accessory for any offence made capital by any statute, shall be liable to the same punishment, whether he is convicted by verdict or on confession, and this as well in the case of accessories as of principals."

Sec. 1062. (Bill clause 642)

"In all cases where an offender is sentenced to death, the sentence or judgment to be pronounced against him shall be that he be hanged by the neck until he is dead."

Sec. 1063. (Bill clause 643)

"In the case of any prisoner sentenced to the punishment of death, the judge before whom such prisoner has been convicted shall forthwith make a report of the case to the Secretary of State for the information of the Governor General; and the day to be appointed for carrying the sentence into execution shall be such as, in the opinion of the judge, will allow sufficient time for the signification of the Governor's pleasure before such day.

2. If the judge thinks such prisoner ought to be recommended for the exercise of the royal mercy, or if, from the non-decision of any point of law reserved in the case, or from any other cause, it becomes necessary to delay the execution, he, or any other judge of the same court, or any judge who might have held or sat in such court, may, from time to time, either in term or in vacation, reprieve such offender for such period or periods beyond the time fixed for the execution of the sentence as are necessary for any of the purposes aforesaid.

3. In the Northwest Territories and in the Yukon Territory, when any person is convicted of a capital offence and is sentenced to death the judge or stipendiary magistrate who tried the case shall forthwith forward to the Secretary of State of Canada full notes of the evidence with his report upon the case, and the execution shall be stayed until such report is received and the pleasure of the Governor General therein is communicated to the Commissioner of the Northwest Territories or of the Yukon Territory, as the case may be."

Sec. 1064. (Bill clause 644)

"Every one who is sentenced to suffer death shall, after judgment, be confined in some safe place within the prison, apart from all other prisoners; and no person except the gaoler and his servants, the medical officer or surgeon of the prison and a chaplain or a minister of religion, shall have access to any such convict, without permission, in writing, of the court or judge before whom such convict has been tried, or of the sheriff."

Sec. 1065. (Bill clause 645)

"Judgment of death to be executed on any prisoner shall be carried into effect within the walls of the prison in which the offender is confined at the time of execution."

Sec. 1066. (Bill clause 645)

"The sheriff charged with the execution, and the gaoler and medical officer or surgeon of the prison, and such other officers of the prison and such persons as the sheriff requires, shall be present at the execution."

Sec. 1067. (Bill clause 645)

"Any justice for the district, county or place to which the prison belongs, and such relatives of the prisoner or other persons as it seems to the sheriff proper to admit within the prison for the purpose, and any minister of religion who desires to attend, may also be present at the execution."

Sec. 1068. (Bill clause 646)

"As soon as may be after judgment of death has been executed on the offender, the medical officer or surgeon of the prison shall examine the body of the offender, and shall ascertain the fact of death, and shall sign a certificate thereof, in form 71, and deliver the same to the sheriff.

2. The sheriff and the gaoler of the prison, and such justices and other persons present, if any, as the sheriff requires or allows, shall also sign a declaration in form 72 to the effect that judgment of death has been executed upon the offender."

Sec. 1069. (Bill clause 647)

"The duties imposed upon the sheriff, gaoler, medical officer or surgeon by the three sections last preceding may be, and, in his absence, shall be performed by his lawful deputy or assistant, or other officer or person ordinarily acting for him, or conjointly with him, or discharging the duties of any such officer."

Sec. 1070. (Bill clause 648)

"A coroner of a district, county or place to which the prison belongs wherein judgment of death is executed on any offender shall, within twenty-four hours after the execution, hold an inquest on the body of the offender.

2. The jury at the inquest shall inquire into and ascertain the identity of the body and whether judgment of death was duly executed on the offender.

3. The inquisition shall be in duplicate, and one of the originals shall be delivered to the sheriff.

4. No officer of the prison and no prisoner confined therein shall, in any case, be a juror on the inquest."

Sec. 1071. (Bill clause 650)

"The body of every offender executed shall be buried within the walls of the prison within which judgment of death is executed on him, unless the Lieutenant Governor in Council orders otherwise."

Sec. 1072. (Bill clause 649)

"Every certificate and declaration, and a duplicate of the inquest required by this Part shall in every case be sent with all convenient speed by the sheriff to the Secretary of State, or to such other officer as is, from time to time, appointed for the purpose by the Governor in Council.

2. Printed copies of such several instruments shall as soon as possible, be exhibited and shall for twenty-four hours at least, be kept exhibited on or near the principal entrance of the prison within which judgment of death has been executed.

Section 1073. (Bill clause 651)

"The omission to comply with any provision of the preceding sections of this Part shall not make the execution of judgment of death illegal in any case in which such execution would otherwise have been legal."

Section 1074. (Bill clause 652)

"Except in so far as is hereby otherwise provided, judgment of death shall be carried into effect in the same manner as if the above provisions had not been passed."

Section 1075. (Bill clause 653)

"The Governor in Council may, from time to time, make such rules and regulations to be observed on the execution of judgment of death in every prison, as he, from time to time, deems expedient for the purpose, as well of guarding against any abuse in such execution, as of giving greater solemnity to the same, and of making known without the prison walls the fact that such execution is taking place.

2. All such rules and regulations shall be laid upon the tables of both Houses of Parliament within six weeks after the making thereof, or, if Parliament is not then sitting, within fourteen days after the commencement of the next sitting thereof."

Section 1077. (Bill clause 656)

"The Crown may commute the sentence of death passed upon any person convicted of a capital offence to imprisonment in the penitentiary for life, or for

any term of years not less than two years, or to imprisonment in any gaol or other place of confinement for any period less than two years, with or without hard labour.

2. An instrument under the hand and seal-at-arms of the Governor General, declaring such commutation of sentence, or a letter or other instrument under the hand of the Secretary of State of Canada or of the Under Secretary of State, shall be sufficient authority to any judge or justice, having jurisdiction in such case, or to any sheriff or officer to whom such letter or instrument is addressed, to give effect to such commutation and to do all such things and to make such orders, and to give such directions, as are requisite for the change of custody of such convict, and of his conduct to and delivery at such gaol or place of confinement or penitentiary, and his detention therein according to the terms on which his sentence has been commuted."

The rules that have been made by the Governor in Council under section 1075 of the Criminal Code, and that are in force, are contained in P.C. 10354 of November 17, 1942. They are as follows:

1. That executions shall take place as soon after midnight as can conveniently be arranged.

2. That, in so far as it is practicable, executions be conducted in such a manner as to preclude any public view thereof.

B. CORPORAL PUNISHMENT

The present Criminal Code of Canada provides for punishment by whipping for the following offences:

1. *Sec. 80—Assault on Sovereign—* { (Bill clause 52)
(Punishment of whipping
dropped in the Bill)

"Every one is guilty of an indictable offence and liable to seven years' imprisonment, and to be whipped once, twice or thrice as the court directs, who

- (a) wilfully produces, or has, near His Majesty, any arm or destructive or dangerous thing with intent to use the same to injure the person of, or to alarm His Majesty; or
- (b) wilfully and with intent to alarm or to injure His Majesty or to break the public peace,
 - (i) points, aims or presents, or attempts to point, aim or present, at or near His Majesty, any firearm, loaded or not, or any other kind of arm,
 - (ii) discharges or attempts to discharge at or near His Majesty any loaded arm,
 - (iii) discharges or attempts to discharge any explosive material near His Majesty,
 - (iv) strikes, or strikes at, or attempts to strike, or strike at, His Majesty in any manner whatever,
 - (v) throws, or attempts to throw, anything at or upon His Majesty."

2. *Sec. 204—Male party to incest.* (Bill clause 142)

"(1) Every parent and child, every brother and sister, and every grandparent and grandchild, who cohabit or have sexual intercourse with each other, shall each of them, if aware of their consanguinity, be deemed to have committed incest, and be guilty of an indictable offence and liable to fourteen years' imprisonment, and the male person shall also be liable to be whipped: Provided that, the court or judge is of opinion that the female accused is a party to such intercourse only by reason of the restraint, fear or duress of the other party, the court or judge shall not be bound to impose any punishment on such person under this section.

(2) In this section the expressions 'brother' and 'sister' respectively include half-brother and half-sister."

3. *Sec. 206*—Gross indecency. (Bill clause 149)

"Every male person is guilty of an indictable offence and liable to five years' imprisonment and to be whipped who, in public or private, commits, or is a party to the commission by any male person of, any acts of gross indecency with another male person."

4. *Sec. 276*—Choking, drugging, etc., to overcome resistance. (Bill clause 218)

"Every one is guilty of an indictable offence and liable to imprisonment for life and to be whipped, who with intent thereby to enable himself or any other person to commit, or with intent thereby to assist any other person in committing, any indictable offence,

- (a) by any means whatsoever, attempts to choke, suffocate or strangle any other person, or by any means calculated to choke, suffocate or strangle, attempts to render any other person insensible, unconscious or incapable of resistance; or
- (b) unlawfully applies or administers to, or causes to be taken by, or attempts to apply or administer to, or attempts, or causes to be administered to or taken by, any person, any chloroform, laudanum or other stupefying or overpowering drug, matter or thing."

5. *Sec. 292*—Indecent assault on female and assault occasioning actual bodily harm to wife or other female. —(Bill clause 141)

"Every one is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped, who

- (a) indecently assaults any female; or
- (b) does anything to any female by her consent which but for such consent would be an indecent assault, if such consent is obtained by false and fraudulent representations as to the nature and quality of the act; or
- (c) assaults and beats his wife or any other female and thereby occasions her actual bodily harm."

6. *Sec. 293*—Indecent assault on male. (Bill clause 148)

"Every one is guilty of an indictable offence and liable to ten years' imprisonment, and to be whipped, who assaults any person with intent to commit sodomy or who, being a male, indecently assaults any other male person."

7. *Sec. 299*—Rape. (Bill clause 136)

"Every one who commits rape is guilty of an indictable offence and liable to suffer death or to imprisonment for life, and to be whipped."

8. *Sec. 300*—Attempted rape. (Bill clause 137)

"Every one is guilty of an indictable offence and liable to seven years' imprisonment and to be whipped, who attempts to commit rape."

9. *Sec. 301*—Carnal knowledge of girl under 14 years. (Bill clauses 138 and 131 (4))

"Every one is guilty of an indictable offence and liable to imprisonment for life, and to be whipped, who carnally knows any girl under the age of fourteen years, not being his wife, whether he believes her to be of or above that age or not."

10. *Sec. 302*—Attempted carnal knowledge of girl under 14 years. (Dropped in Bill because covered by general “attempt” clause—406)

“Every one who attempts to have unlawful carnal knowledge of any girl under the age of fourteen years is guilty of an indictable offence and liable to two years’ imprisonment, and to be whipped.”

11. *Sec. 447*—Robbery. (Bill clause 289)

“Every one who commits robbery is guilty of an indictable offence and liable to fourteen years’ imprisonment and to be whipped.”

12. *Sec. 457*. (Bill clause 292)

“(1) Every one is guilty of an indictable offence and liable to imprisonment for life who

- (a) breaks and enters a dwelling-house with intent to commit any indictable offence therein; or
- (b) breaks and enters any dwelling-house and commits any indictable offence therein; or
- (c) breaks out of any dwelling-house either after committing any indictable offence therein, or after having entered such dwelling-house with intent to commit an indictable offence therein.

(2) Every one convicted of an offence under this section who when arrested, or when he committed such offence, had upon his person any offensive weapon, shall, in addition to the imprisonment above prescribed, be liable to be whipped.”

13. *Sec. 1060*—Whipping. (Bill clause 641)

“Whenever whipping may be awarded for any offence, the court may sentence the offender to be once, twice or thrice whipped, within the limits of the prison, under the supervision of the medical officer of the prison, or if there be no such officer, or if the medical officer be for any reason unable to be present, then, under the supervision of a surgeon or physician to be named by the Minister of Justice, in the case of prisons under the control of the Dominion, and in the case of other prisons by the Attorney General of the province in which such prison is situated.

2. The number of strokes shall be specified in the sentence, and the instrument to be used for whipping shall be a cat-o’-nine tails unless some other instrument is specified in the sentence.

3. Every whipping shall take place, under the supervision as aforesaid, at such time as may be determined by the officer in charge of the prison: Provided that whenever practicable, every whipping shall take place not less than ten days before the expiration of any term of imprisonment to which the offender is sentenced for the offence.

4. Whipping shall not be inflicted on any female.”

C. LOTTERIES

The following are the provisions of the present Criminal Code relating to lotteries.

Section 226(1), (2) (Bill clause 168(1)(d), 168(2), 168(4))

“A common gaming house is

- (a) a house, room or place kept by any person for gain, to which persons resort to for the purpose of playing at any game of chance, or at any mixed game of chance and skill; or

- (b) a house, room or place kept or used for playing therein at any game of chance, or any mixed game of chance and skill, in which
 - (i) a bank is kept by one or more of the players exclusively of the others; or
 - (ii) the whole or any portion of the stakes or bets or other proceeds at or from such games is either directly or indirectly paid to the person keeping such house, room or place, or any direct or indirect fee is charged to or paid by the players or any of them for the right or privilege of participating, or for the purpose of enabling them or any of them to participate, in such games or for the use of any gaming appliances, tables, chairs or other paraphernalia employed in playing such games; but the provisions of this subparagraph shall not apply to any house, room or place while occupied and used by an incorporated *bona fide* social club or branch thereof if the whole or any portion of the stakes or bets or other proceeds at or from such games is not either directly or indirectly paid to the person keeping such house, room or place, and no fee in excess of ten cents per hour or fifty cents per day is charged to the players for the right or privilege of participating in such games, nor while occasionally being used by charitable or religious organizations for playing games therein for which a direct fee is charged to the players if the proceeds are to be used for the benefit of any charitable or religious object;
 - (iii) any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the game is managed, or against whom the other players stake, play or bet.

2. Any such house, room, or place shall be a common gaming house, although part only of such game is played there and any other part thereof is played at some other place, either in Canada or elsewhere, and although the stake played for, or any money, valuables, or property depending on such game, is in some other place, either in Canada or elsewhere."

Sec. 228. (Bill clause 176)

"Every one who, without lawful excuse, is found in any disorderly house shall be liable on summary conviction to a penalty not exceeding one hundred dollars and costs and in default of payment to two months' imprisonment.

2. Any one who, as landlord, lessor, tenant, occupier, agent or otherwise, has charge or control of any premises and knowingly permits such premises or any part thereof to be let or used for the purposes of a disorderly house shall be liable upon summary conviction to a fine of two hundred dollars and costs, or to imprisonment not exceeding two months, or to both fine and imprisonment."

Sec. 229 (1). (Bill clause 176)

"Every one who keeps any common gaming-house, or common betting-house is guilty of an indictable offence and liable to one year's imprisonment."

Sec. 230. (Bill Clause 175)

"Every one is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding one hundred dollars, and to six months' imprisonment with or without hard labour who,

- (a) wilfully prevents any constable or other officer duly authorized to enter any disorderly house, from entering the same or any part thereof; or

- (b) obstructs or delays any such constable or officer in so entering; or
- (c) by any bolt, chain or other contrivance secures any external or internal door of, or means of access to, any common gaming house so authorized to be entered; or
- (d) uses any means or contrivance whatsoever for the purpose of preventing, obstructing or delaying the entry of any constable or officer, authorized as aforesaid, into any such disorderly house or any part thereof;
- (e) being the owner or other person in control of premises occupied or used as a disorderly house, knowingly allows any contrivance whatsoever upon the said premises for the purpose of preventing, obstructing or delaying the entry of any constable or officer authorized as aforesaid into any such disorderly house, or any part thereof."

Sec. 236. (Bill clause 177)

"Every one is guilty of an indictable offence and liable to two years' imprisonment and to a fine not exceeding two thousand dollars who

- (a) makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan for advancing, lending, giving, selling or in any way disposing of any property, by lots, cards, tickets, or any mode of chance whatsoever; or
- (b) sells, barter, exchanges or otherwise disposes of, or causes or procures, or aids or assists in, the sale, barter, exchange or other disposal of, or offers for sale, barter or exchange, any lot, card, ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any property, by lots, tickets or any mode of chance whatsoever, or
- (bb) knowingly sends, transmits, mails, ships, delivers or allows to be sent, transmitted, mailed, shipped or delivered, or knowingly accepts for carriage or transport or conveys any article which is used or intended for use in the carrying out of any device, proposal, scheme or plan for advancing, lending, giving, selling or otherwise disposing of any property by any mode of chance whatsoever; or
- (c) conducts or manages any scheme, contrivance or operation of any kind for the purpose of determining who, or the holders of what lots, tickets, numbers or chances, are the winners of any property so proposed to be advanced, loaned, given, sold or disposed of; or conducts, manages or is a party to any scheme, contrivance or operation of any kind by which any person, upon payment of any sum of money, or the giving of any valuable security, or by obligating himself to pay any sum of money or give any valuable security, shall become entitled under such scheme, contrivance or operation to receive from the person conducting or managing such scheme, contrivance or operation, or any other person, a larger sum of money or amount of valuable security than the sum or amount paid or given; or to be paid or given, by reason of the fact that other persons have paid or given, or obligated themselves to pay or give any sum of money or valuable security under such scheme, contrivance or operation; or
- (d) disposes of any goods, wares or merchandise by any game or mode of chance or mixed chance and skill in which the contestant or competitor pays money or other valuable consideration; or
- (e) induces any person to stake or hazard any money or other valuable property or thing on the result of any dice game, shell game, punch board, coin table or on the operation of any wheel of fortune:

Provided that the provisions of paragraph (d) and (e) of this subsection in so far as they do not relate to any dice game, shell game, punch board or coin table, shall not apply to any agricultural fair or exhibition, or to any operator of a concession leased by any agricultural fair or exhibition board within its own grounds and operated during the period of the annual fair held on such grounds.

2. Every one is guilty of an offence and liable on summary conviction to a penalty of twenty dollars, who buys, takes or receives any such lot, ticket or other device as aforesaid.

3. Every sale, loan, gift, barter or exchange of any property, by any lottery, ticket, card or other mode of chance depending upon or determined by chance or lot, is void, and all property so sold, lent, given, bartered or exchanged, shall be forfeited to His Majesty.

4. No such forfeiture shall affect any right or title to such property acquired by any *bona fide* purchaser for valuable consideration without notice.

5. This section includes the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and the sale or offer for sale of any ticket chance or share in any such lottery, or the advertisement for sale of such ticket, chance or share, and the conducting or managing of any such scheme, contrivance or operation for determining the winners in any such lottery.

6. This section does not apply to

- (a) the division by lot or chance of any property by joint tenants or tenants in common, or persons having joint interests (*droits indivis*) in any such property;
- (b) raffles for prizes of small value at any bazaar held for any charitable or religious object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve or other chief officer of the city, town or other municipality, wherein such bazaar is held, and the articles raffled for thereat have first been offered for sale and none of them are of a value exceeding fifty dollars;
- (c) the distribution by lot of premiums given as rewards to promote thrift by punctuality in making periodical deposits of weekly savings in any chartered savings bank;
- (d) bonds, debentures, debenture stock or other securities recallable by drawing of lots and redeemable with interest and providing for payment of premiums upon redemption or otherwise;
- (e) the Art Union of London, Great Britain, or the Art Union of Ireland."

Sec. 641. (Bill clause 171)

"(1) If a constable or other peace officer of any city, town, incorporated village, or other municipality or district, organization or unorganized, or place, reports in writing to the mayor or chief magistrate, recorder or to a judge of the Sessions of the Peace, or to the police, stipendiary or district magistrate of such city, town, incorporated village or other municipality, district, or place, or to any justice having such jurisdiction, that there are good grounds for believing, and that he does believe, that any house, room or place within the said city or town, incorporated village or other municipality, district or place is kept or used as a disorderly house, or for betting, wagering or pool selling contrary to the provisions of section two hundred and thirty-five, or for the purpose of carrying on a lottery or for the sale of lottery tickets or for the purpose of conducting or carrying on of any scheme, contrivance or operation for the purpose of determining the winners in any lottery contrary to the provisions of section two hundred and thirty-six, whether admission thereto

is limited to those possessed of entrance keys or otherwise; such mayor, chief magistrate, recorder, police, stipendiary or district magistrate or justice, may, by order in writing, authorize the constable or other peace officer to enter and search any such house, room or place with such other constables or peace officers as are deemed requisite by him, and such peace officer or peace officers may thereupon enter and search all parts of such house, room or place and if necessary may use force for the purpose of effecting such entry, whether by breaking open doors, or otherwise, and may take into custody all persons who are found therein, and may seize all tables and instruments of gaming, wagering, or betting and all moneys and securities for money and all instruments or devices for the carrying on of a lottery, or of any scheme, contrivance or operation for determining the winners in any lottery, and all lottery tickets and all intoxicating liquors and all circulars, advertisements, printed matter, stationery and things which may be found in such house or premises which appear to have been used or to be intended for use for any illegal purpose or business, and shall bring the same before the person issuing such order or any justice, to be by him dealt with according to law.

(2) If at any time a peace officer, although not having an order under subsection one of this section, finds any person in the act of keeping a gaming house or being present in a gaming house, such peace officer may seize all instruments of gaming and all other articles mentioned in subsection one of this section found in or on the premises where the above offence is taking place: Provided that as soon as possible thereafter a charge shall be laid according to law against the persons found committing an offence as above: Provided also that such objects so seized shall in due course be brought before the magistrate seized with the matter, to be dealt with in the manner provided for in subsection three of this section.

(3) The person issuing such order, or the justice before whom any person is taken by virtue of an order under this section, may direct that any money or securities for money so seized shall be forfeited, and that any other thing seized shall be destroyed or otherwise disposed of: Provided that nothing shall be destroyed or disposed of pending any appeal or any proceeding in which the right of seizure is questioned or before the time within which such appeal or other proceeding may be taken has expired.

(4) Nothing in this section contained shall be construed to authorize the seizure, forfeiture or destruction of any telephone, telegraph or communication instrument, facilities or equipment found in any such house, room or place and owned by any telephone or telegraph company, or any government telephone or telegraph system, engaged in furnishing telephone, telegraph or communication service to the public, or forming part of the service or system of any such company or government system."

Sec. 642 (1), (2). (Bill clause 174)

"The person issuing such order or the justice before whom any person who has been found in any house, room or place, entered in pursuance of any order under the last preceding section, is taken by virtue of such order may require any such person to be examined on oath and to give evidence touching any unlawful gaming in such house, room or place, or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, room or place, or any part thereof, of any constable or officer authorized to make such entry; and any such person so required to be examined as a witness who refuses to make oath accordingly, or to answer any question, shall be subject to be dealt with in all respects as any person appearing as a witness before any justice or court in obedience to a summons or subpoena and refusing without lawful cause or excuse to be sworn or to give evidence, may by law, be dealt with.

2. Every person so required to be examined as a witness, who, upon such examination, makes true disclosure, to the best of his knowledge, of all things as to which he is examined shall receive from the judge, justice, magistrate, examiner or other judicial officer before whom such proceeding is had, a certificate in writing to that effect, and shall be freed from all criminal prosecutions and penal actions, and from all penalties, forfeitures and punishments to which he has become liable for anything done before that time in respect of any act of gaming regarding which he has been so examined, if such certificate states that such witness made a true disclosure in respect to all things as to which he was examined, and any action, indictment or proceedings pending or brought in any court against such witness in respect of any act of gaming regarding which he was so examined, shall be stayed, upon the production and proof of such certificate, and upon summary application to the court in which such action, indictment or proceeding is pending or any judge thereof, or any judge of any of the superior courts of any province."

